Session No. 734

A Risk Management Approach to Public Sector Worker's Compensation

Fred E. Fanning, M.Ed., M.A., CSP
Director for Administrative Services
Fredericksburg, Virginia

Introduction

This paper provides the Public Sector Safety Professional with knowledge of a risk management approach to worker's compensation. This paper focuses on a risk management model developed in an academic environment for applying risk criteria to the problems associated with returning injured employees to work thereby controlling compensation costs.

This method was developed for an action learning event for an Executive Leadership Development Program. None of the participants in this learning event were safety professionals. The author, as a safety professional, developed the concept for and served as the executive sponsor for the team. The end product of the action learning event was a report and a presentation made to the Safety and Occupational Council of an Executive Agency of the Federal Government.

There are a number of issues within the realm of workers' compensation that include:

- Third party involvement
- Dead compensation recipients who continue to receive benefits
- Surviving spouse's of dead compensation recipients who have remarried and are no longer eligible for benefits, but still receiving them
- Missing medical documentation needed to determine if an employee can return to work,
- Return to work of able compensation recipients
- Investigation of fraud

In this paper the author will focus on returning the injured or ill compensation recipient to work.

Background

Federal civilian employees, as well as some contractors and volunteers for the federal government, receive workers' compensation payments in accordance with the Federal Employee's Compensation Act (FECA), Title 5 Part III, Subpart G, Chapter 81, Subchapter I. The requirements for this program are further codified in 20 Code of Federal Regulations, Part 1-199. The Federal Employees' Compensation Act provides workers' compensation coverage to three million Federal and Postal workers including wage replacement, medical and vocational rehabilitation benefits for work-related injury and occupational disease (FECA, 2008, 1).

Compensation recipient's medical expenses are paid in full, while income compensation is 66.67 percent of gross wages for employees with no dependents, and 75 percent for those with dependents (Injury Compensation for Federal Employees, DOL, 2007, 40)
Each federal agency incurs the costs of its own workers' compensation recipients, but relies on the Department of Labor (DOL) to administer the FECA program. Agencies provide DOL with detailed information about compensation recipients. DOL then processes the claims and bills the agencies annually for reimbursement through the use of "charge back" reports.

The "silver bullet" for worker's compensation is to return the compensation recipient to work. Unfortunately, there are a lot of people involved in the process as well as legal restrictions. There are as many ways to return a compensation recipient to work as there are claims. Some work and others don't; however, most are very subjective. The key areas that can be used to determine if an employee should be targeted for return-to-work are:

- Employee interest in returning;
- Amount of leave already taken;
- Employee's physical condition; and
- Reassignment factors.

What is needed is a methodology for ranking desirability of return to work based on measurable criteria. This paper will elaborate on the information gathered in a literature search which led to 25 measurable criteria that can be used to measure the potential for success in a return-to-work effort. This paper will then break these criteria into the four key areas listed above.

What is needed is a methodology for ranking desirability of return to work. To support that methodology there must be measurable criteria identified that can be used to measure the potential for success in a return-to-work effort.

Discussion

The author sponsored the team of individuals to develop a methodology for ranking desirability of return to work based on measurable criteria. To support that methodology the team also identified measurable criteria to measure the potential for success in a return-to-work effort. This method and supporting criteria would serve as a strategy for enhancing the return to work of ready and able employees who have been receiving worker compensation for extended period.

Exhibit 1 provides the model for the process of returning compensation recipients to work. Most Environment, Health, and Safety (EHS) offices have a database of claims that allows them to track the expenses; however, this database is normally not able conduct the analysis needed to return compensation recipients to work (Ankel, et al, 2006, 7). For that the EHS office must first acquire or develop a single user friendly database on the pool of compensation recipients who are on the permanent leave for worker's compensations. This database should include the following parameters for each compensation recipient listed in the original database.

- Likelihood of return to work, given what is known about the compensation recipient;
- The estimated work capacity (percent of full time labor) that would be expected if the compensation recipient return to work; and
- Categories of necessary adjustments to the work environment e.g., work at home, special equipment, restriction on hours.

The analysis should result in a ranking of the desirability of workers compensation recipients' based on the above mentioned parameters. It would also depend on other economic factors such as the salary level and expected duration of employment. This will be called the target group, because they will be targeted for return to work. Once the target group has been identified the EHS office should work with human resources, supervisors, and budget officers to develop strategies and methods to bring these compensation recipients back to work, as displayed in the right side of Exhibit 1. The consequences of these actions will then serve as important feedback into the various parts of the model, such as the development of improved database, the methodology for ranking desirability of return to work, identification of the target group, and the strategies and methods use to affect their return (Ankel, et al, 2006, 7).

In addition to the new method of analysis, the return to work processes can be improved through more and better communication that leads to understanding among the physicians responsible for treating compensated injuries or illnesses, the offices within the employer organization that process the workers' compensation paperwork, and the actual workplace where the injury occurred and where the compensation recipient is likely to return. Supervisors must know the compensation recipient's ability to perform the "essential functions" of his or her job. To do this the supervisor must know the physical and mental condition of the compensation recipient following the illnesses or injury. This calls for collaboration between the physician and supervisor, during which the full knowledge of the workplace and the compensation recipient's physical state can be known and assessed with the intent of developing a plan for the compensation recipient's future return to work. Physicians need to understand the employee's job function and explore the possibilities of modified duties. Likewise supervisors should have some sense, from the medical community, whether light or modified duties would be feasible for the employee, and if so they should establish them. This will enable the employee to return soon and with a positive perspective on returning to work. (LRP, 2005, 34)

In addition to the physical state of the compensation recipient is his or her mental state. Many employees feel shame about being disabled, even for a short period of time. The longer the compensation recipient is away from the workplace the more they withdraw from their social involvement, which will impede reintegration in the workplace when the time comes. With that in mind the likelihood of returning to work is largely a function of three major factors:

- Time spent on leave
- Interaction among the stakeholders discussed above in the literature review
- Quality of life factors as opposed to type of disorder or disability

It is often said that "the best place to help an injured worker is at work." This is true not only from the emotional sense, but from the physical sense. At home compensation recipients often spend time alone, sitting or lying, with little or no physical activity. While at work the compensation recipient receives the emotional support of his or her friends they also have the opportunity to move around and focus their mind on things other than the way they feel. Most disabilities require some workplace adjustments or "job site modifications". These normally fall into three categories (LRP, 2005, 34-35):

- Site adjustment – these include changing the layout of the work area.
- Job restructuring – involves changing the employee work hours, adding rest periods, to his daily schedule, having him trade jobs with other workers, or limiting or modifying his duties.
- Ergonomic tools - modified hand tools equipment and appliances designed with ergonomic in mind.

These adjustments and modifications must be considered in the agencies selection of the return to work target group. The second step in the return to work process is to identify the major categories that must be examined to rank the likelihood. The team identified four major categories can be examined to rank the likelihood of the compensation recipient returning to work. Those four are:

- Employee interest in returning
- Leave already taken,
- Employee's physical condition,
- Reassignment factors.

With those identified the next step is to identify measurable criteria that can be used to score a worker's likelihood of returning to work. The team identified 25 measurable criteria that can be used, see table 1. These criteria fall within the four general categories that are in column one of table 1.

Data must be compiled for each compensation recipient on long term workers' compensation and added to the revised database that will enable scoring of each criterion listed in table 1. Table 1 is filled out using the information found in the compensation recipient's information in the database. The EHS or workers' compensation specialist would go to question one in the table, which is "1. The employee communicated to supervisor interest in returning." The EHS or workers' compensation specialist then goes to the database and checks the column of the data base to find the answer to this question. If the answer is "yes the compensation recipient did communicate to his or her supervisor an interest in returning to work, one point would be scored (a "1" would be place in the right most column in the table for the criterion). It the compensation recipient did not communicate an interest to return to work to his or her supervisor then no point would be received.

The next step is that the entire table is scored for each compensation recipient in the following manner with points tallied and the total score evaluated.

- High Probability of Return – for scores of 20-25 points;
- Moderate Probability of Return – for scores of 15-19; and
- Low Probability of Return – for scores of 0-14.

The desirability of return to work is then determined partially on the basis of these scores, in combination with an assessment of the general salary level and the capacity to perform duties. For obvious reasons employers have a greater interest in returning high paid compensation recipients to work than low paid compensation recipients. Employers are also more interested in returning compensation recipients who can work at full, or near full capacity instead of a compensation recipient whose work hours would be substantially less than full time. The reason is basic economics.

The next step of the process is to use table 2 to determine the Target Group that will determine in what order the compensation recipients are returned to work. To explain how table 2 works consider the example of "a compensation recipient on long term workers' compensation leave who is considered to have a high probability of return, a high salary, and is expected to return to work in a high capacity". Now you look for those traits in each of the three columns in table 2. Each of the three columns line up to be a Target Group 1 in the far left column of the table. This means that this compensation recipient is a Target Group 1. Resources are then focused on determining the primary target group for each compensation recipient. This allows for a conscious decision to devote resources on the compensation recipients in Target Group 1 who have the best chance of returning to work in a cost effective manner. Only after all Target Group 1 compensation recipients have been addressed should the focus be shifted to compensation recipients from Target Group 2, who although they have a high probability of return either have a high salary and low capacity or low salary and high capacity and do not provide the return on investment that Target Group 1 compensation recipients do. Once all compensation recipients in Target Groups 1 and 2 have been addressed resources should be focused on Target Group 3. If resources are available after addressing Target Groups 1 through 3 the focus should be shifted to Target Group 4.

Summary

The first step in any improvement in workers' compensation is for the employer to demonstrate a commitment to both supervisors and compensation recipients that it expects, and is committed to, progress in this area. However, that will only go so far without a plan to actually make progress. This paper identified the need for a methodology for ranking desirability of return to work based on measurable criteria. It elaborated on the information gathered in a literature search which led to 25 measurable criteria that can be used to measure the potential for success in a return-to-work effort. Furthermore the paper broke these criteria into the four key areas. The end result is a methodology for ranking desirability of return to work that is supported by measurable criteria that can be used to measure the potential for success in a return-to-work effort. The method in this paper has never been tried and at this point is only a concept or idea. The author has spent considerable time on this topic since May of 2005 and believes that this method should be tested in a controlled environment to determine its efficacy. When this is done this method has the potential to reduce long term workers' compensation claims by as much as 50% in most organizations.

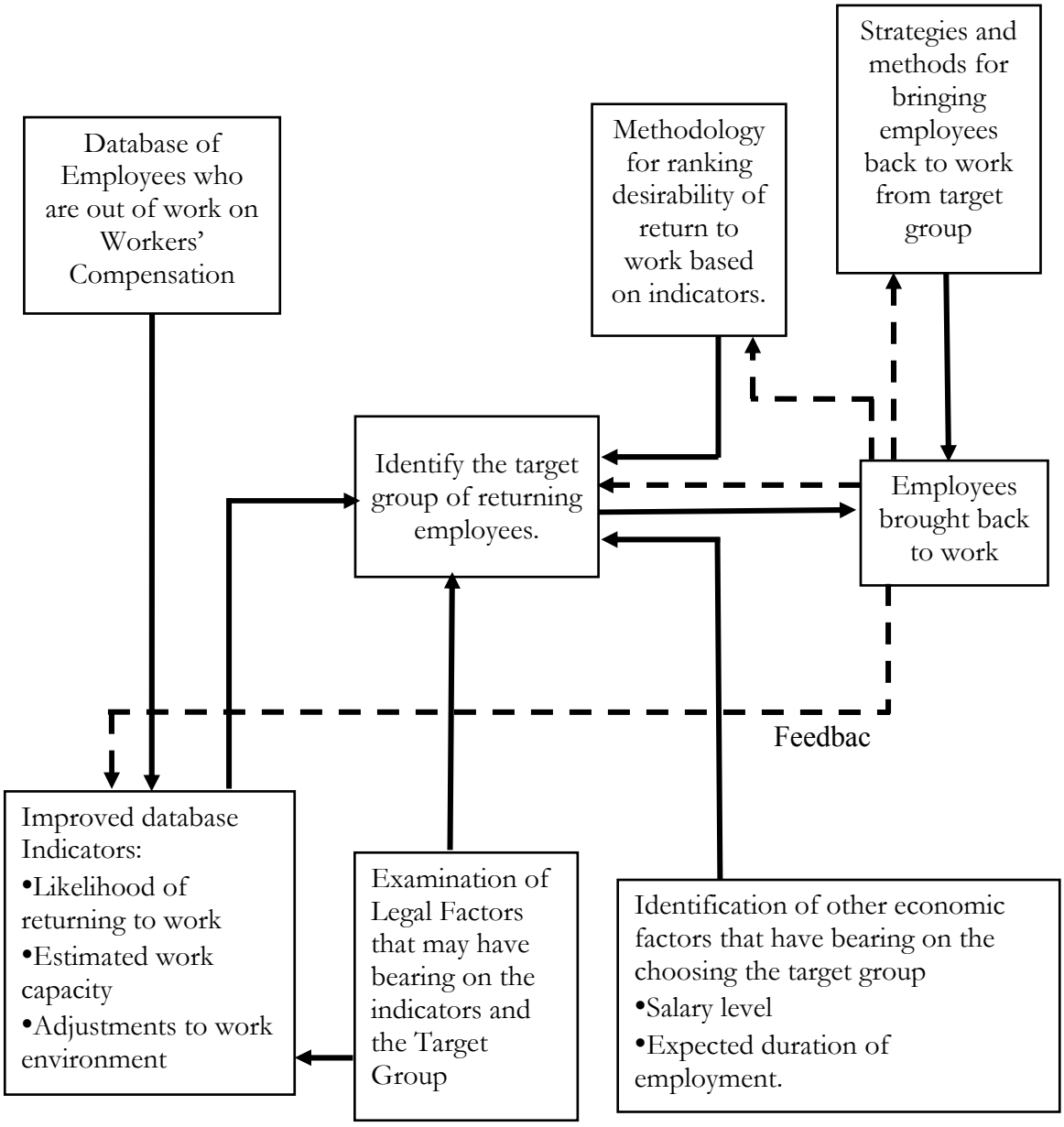

Exhibit 1. Workers' Compensation Return to Work Process Map

Area of Concern	No.	Question / Criterion	Score (0 or 1)
Employee Interested in Returning	1	Employee communicated to supervisor interest in returning to work.	
	2	Discussion held between employee and supervisor regarding return to work.	
	3	Physician observes employee expressing an interest in returning to work.	
	4	Since leave was first taken there has been significant contact by the employee to the supervisor or to coworkers on work-related subject matter.	
Leave Taken (more points for shorter duration)	5	Employee left work within ten years of the scoring of these criteria.	
	6	Employee left within three years of the scoring of these criteria.	
	7	Employee left work within one year of the scoring of thee criteria.	
	8	Less than six months have transpired since any major medical action on the employee's condition (e.g. less than six months after hospital release)	
	9	Less than two months have transpired since any major medical action.	
Physical Conditions	10	Physician recommended definitively that employee is physically capable of returning at least for light or part-time duties.	
	11	Physician suggests return to work is a possibility (This is a weaker condition than condition number 10; if number 10 applies, then this condition receives a point as well).	
	12	Employee is not generally bed-ridden.	
	13	Continuous monitoring in a facility, or by a nurse at home, is not needed.	
	14	Employee is not connected to immobile medical equipment to sustain him or her.	
	15	Employee is not cognitively impaired to an extent that would prelude his or her performing light duties safely.	
	16	Reasonable accommodation is possible for part-time work or work from home.	
	17	Employee is experiencing improvements and/or is awaiting or undergoing treatment to improve his or her condition (e.g. Physical Therapy)	
	18	Employee is not experiencing chronic pain.	
	19	According to the physician, the condition of the employee is not likely to worsen substantially overtime.	
	20	Additional medical conditions, as evidenced, for example, by extended medical leave prior to the injury, are not expected to contribute to the disability.	
Re-assignment Factors	21	Work can be assigned similar in nature to work performed before the injury.	
	22	If similar work cannot be assigned, new work could be associated with a similar salary level (so that the new work would not be demeaning)	
	23	Employee has not relocated since the injury to an area where new work cannot be assigned with the Department of Commerce.	
	24	Employee has generally received favorable performance evaluations prior to the injury (indicating potential motivation to return).	
	25	A position can be established where the employee ca interact with prior coworkers (and would thereby experience less isolation n the new position).	

Table 1. Scoring of Long-Term Worker's Compensation for Likelihood of Return

Target Group (in descending order of preference)	Likelihood of Return	Relative Salary Level (High or low, above or below mean for organization employees)	Work Capacity (High = Full Time or near Full Time; otherwise low
Target Group 1	High Probability	High Salary	High Capacity
Target Group 2	High Probability	High Salary	Low Capacity
Target Group 2	High Probability	Low Salary	High Capacity
Target Group 3	Moderate Probability	High Salary	High Capacity
Target Group 4	Moderate Probability	High Salary	Low Capacity
Target Group 4	Moderate Probability	Low Salary	High Capacity

Table 2. Definitions of Target Groups for Bringing Employees Back to Work

Bibliography

Akel, Philip, Brian Brown, Steven Payson, John Pierson, Strategic Efforts to Maximize the Return to Work of Worker's Compensation Recipients in the U.S. Department of Commerce, July 2006

Department Commerce Supervisors Workers' Compensation Handbook, version 1.0 Retrieved from URL http://ohrm.os.doc.gov/s/groups/public/@doc/@cfoasa/@ohrm/documents/content/prod01_001248.pdf on February 25, 2008.

Title 5-Government Organization and Employees, Part III--Employees, Subpart G-Insurance and Annuities, Chapter 81- Compensation for Work Injuries. Retrieved from URL http://www.access.gpo.gov/uscode/title5/partiii_subpartg_chapter81_.html on February 25, 2008.

Federal Employees Compensation Act Fact Sheet. Retrieved from URL http://www.dol.gov/esa/regs/compliance/owcp/fecafact.htm on February 25, 2008.

Injury Compensation for Federal Employees, Department of Labor September 25, 2007. Retrieved from URL http://www.dol.gov/esa/regs/compliance/owcp/DFEC%20Folio/agencyhb.pdf, on February 25, 008.

Maximizing Return to Work in the Federal Sector: How to Design, Implement, and Maintain a Successful Program, 2005, LRP Publications, Palm Beach Gardens, FL, USA