

Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

TOPIC: WORKERS' COMP AND THE ADA

This topic illustrates how complicated and interrelated legal issues can be.

It is a common workers' compensation scenario for an injured worker, after being declared medically permanent and stationary, to have their doctor place permanent restrictions on their ability to work. The permanent and stationary status ends the worker's right to temporary disability benefits, while their right to future medical treatment and vocational rehabilitation benefits continue. If there are permanent restrictions, the workers' comp examiner contacts the employer to determine whether the entity can provide a modified position that accommodates all of those restrictions. If the employer determines that they cannot accommodate, then the injured worker's permanent disability gets a 15% increase and they are separated from employment.

As discussed in the last topic, the Americans with Disabilities Act prohibits discrimination by employers with 15 or more employees against a disabled worker in any aspect of employment. While the terms used in WC and ADA might have different meanings, the permanent restrictions found by the WC doctor generally trigger the employer's ADA duty to participate in the interactive process to explore whether a reasonable accommodation of the worker's disability can be found. Obviously if the employer has agreed to modify the injured worker's position to accommodate the restrictions there is no need for the interactive process. The unilateral decision by the employer that they cannot accommodate the WC restrictions is not sufficient under the ADA. The interactive process, while informal, probably requires a series of meetings with the disabled worker to determine not only whether they can be reasonably accommodated in their current position, but also whether any other position is available that meets, or can be modified to meet, the restrictions growing out of their disability. The "process" requires "interaction" between the worker and the employer – hence the "interactive process."

Additional issues might be triggered by the state's Fair Employment and Housing Act (applying to any employer with at least 5 employees) which provides disabled persons protection similar to that found in the ADA. There is also protection found in California Labor Code section 132a that states that it is public policy that "there should not be discrimination against workers who are injured in the course and scope of their employment." An employer can defend a 132a claim by proving that their actions were based on a business necessity. The decision to discharge an injured worker because there is no work available for a worker with their types of restrictions can fall under this defense.

Two procedural issues:

- It is absolutely essential that the "informal" process and the results be well documented, and
- The process is employer-wide, and not restricted to the injured worker's department or unit; therefore someone with entity-wide responsibility should be involved in the process.

Next topic: Employment Liability - Damages