

# RISK COMMUNIQUÉ

## *Return to Work Considerations*

*Emergency services organizations (ESO), career and volunteer alike, function in non-traditional work environments full of dangers that place these providers at increased risk of injury on a daily basis. To illustrate this, the National Fire Protection Association (NFPA) reports the American fire service suffered an estimated 69,400 injuries in 2012 (Karter & Molis, 2013) and the National Association of Emergency Medical Technicians (NAEMT) reports EMS practitioners are seven times more likely than the average worker to miss work as a result of injury (American Council on Exercise, 2012).*

Medical or health conditions, whether incurred on the job or on personal time, can prevent an employee/member from functioning at a full-duty level. It is not unusual for the injured employee/member to want to return to duty as soon as they begin feeling better. However, returning prematurely to the unpredictable work environments encountered can lead to an increased risk of further injury or death. Some ESOs may be able to accommodate a limited duty return to work program on a case-by-case basis. Transitional duty is a favorable option, however it is imperative the employee/member reaches a full level of functionality before returning to full-duty.

An objective evaluation of several important factors may help protect both the organization and the employee/member. These include but are not limited to the following:

### ***How serious is the health condition?***

The first administrative step would be to adopt key definitions as they relate to injuries and return to work. Not all medical conditions require a complete rehabilitation program before an employee/member can return to work. For example, an uncomplicated case of the flu may require a few days off from work, but does not require the employee/member to undergo rigorous return to duty scrutiny.

A serious health condition can be one in which the employee/member is unable to perform their duties as a result of a health condition requiring inpatient care, absence of more than three calendar days that also involves continuing treatment by a medical professional or any incapacity related to a period of treatment for a chronic condition<sup>1</sup>.

While the serious health condition definition can be a starting point for the ESO, it may not encompass the entire realm of health conditions that may affect an employee/member and therefore conditions outside of the serious health condition definition may still require scrutiny before an employee/member returns to work. Consider adopting definitions addressing other injuries and medical conditions that would impair the employee/member's ability to perform their duties safely and may require scrutiny before an employee/member returns to work.

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<sup>1</sup> A serious medical condition as defined by the U.S. Department of Labor Wage and Hour Division in reference to the Family and Medical Leave Act (FMLA) may be used by an ESO as a guide to determine when an employee may need to participate in a return to work evaluation prior to returning to duty. This can be utilized by the ESO whether or not they are required to participate in FMLA. (Complete details are available at: [www.dol.gov/whd/regs/compliance/1421.htm](http://www.dol.gov/whd/regs/compliance/1421.htm)).

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## ***How frequently should the organization and the employee/member communicate?***

In instances where an employee/member may be unable to return to work for a long period of time, it is often beneficial for ESO supervisors to maintain regular contact with the employee/member. Regular contact reinforces to the employee the organization wants them back to work and is concerned about their well-being. This also helps the organization keep up-to-date on changes in the employee's condition and monitor their progress. Engaging the employee/member in communication also allows the employee to know the organization is supportive of their efforts to return to work. Keep in mind the need to maintain confidentiality about the employee/member's condition.

## ***Can the individual meet the demands outlined in the functional job description?***

Having a functional job description is essential in evaluating an employee/member's ability to fully return to their position. Define the basic position requirements; the environment and conditions in which these requirements may be encountered; and any physical requirements. (Refer to VFIS Risk Communiqué *Employee Practice Exposure—Job or Position Description*)

Share the functional job description with the medical professional caring for the affected member. This will allow the medical professional to review the specific physical requirements of the job – enabling them to decide on the ability of an employee/member to return to full duty. If the employee/member is unable to perform all of the tasks in the functional job description – they should not be allowed to return to full duty.

An important adjunct to the functional job description is the development of a validated Physical Ability Test (PAT), which reflects the demands of the job. After a serious health condition, completion of the PAT will validate the ability of the employee/member to return to work.

## ***Does the injury require rehabilitation and work hardening?***

After suffering a debilitating medical condition or injury that requires a return to work evaluation, an employee/member may be required to participate in physical rehabilitation and/or work hardening programs.

Provide the medical professionals who oversee rehabilitation and work hardening with a copy of the functional job description and any PATs to better understand the demands of the employee/member's job. This will help focus the rehabilitation and work hardening efforts on performing the duties that are expected. Ideally, consider selecting a rehabilitation or work hardening professional familiar with ESO operations. The ESO's workers' compensation carrier may also be involved in the selection of an appropriate medical professional based on past results.

## ***Are reasonable accommodations feasible for the employee/member?***

In certain instances, an employee/member is unable to return to full duty as described in the functional job description, but may remain a valuable member of the ESO by the employer allowing a reasonable accommodation. A reasonable accommodation is a modification or adjustment to a job, the work environment or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity (Job Accommodation Network, 2009).

The employer may have a legal responsibility to create a reasonable accommodation based on American's with Disabilities Act (ADA), which states in part it is unlawful "not to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless such covered entity can demonstrate that the accommodation would impose an undue hardship ..." (29 C.F.R. 1630.9(a)).

*This is a sample guideline furnished to you by VFIS. Your organization should review this guideline and make the necessary modifications to meet your organization's needs. The intent of this guideline is to assist you in reducing exposure to the risk of injury, harm, or damage to personnel, property, and the general public. For additional information on this topic, contact your VFIS Risk Control Representative at (800) 233-1957.*

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One example of such an accommodation is the case of a firefighter who was diagnosed with Post-Traumatic Stress Disorder and patellar tendinitis of both knees. He was unable to meet the requirements of the annual physical fitness test as a result of his knee injuries. The fire department accommodated this firefighter by re-assigning him to a driver/operator of an engine without any interior firefighting responsibilities. However, not every department can make this accommodation without creating an undue hardship.

Reasonable accommodations and other aspects of the ADA can be complex and must be evaluated on a case-by-case basis. It is recommended chief officers and supervisors determine if reasonable accommodations may exist within the department and consult with legal counsel before offering or declining to offer an employee/member a reasonable accommodation.

***What should be considered once the employee/member returns to work?***

Once an employee/member has returned to full duty (or a reasonable accommodation has been made), maintain frequent open communication with the employee/member regarding their status and ability to perform essential job functions. Refer any difficulty performing functions to the employee/member's medical professional for additional follow-up.

***Additional Resources/References:***

American Council on Exercise. (2012). *Task Performance and Health Improvement Recommendations for Emergency Medical Service Practitioners*. San Diego: American Council on Exercise.

Job Accommodation Network. (2009, May 1). *Employers' Practical Guide to Reasonable Accommodation Under the Americans with Disabilities Act*. Retrieved January 2, 2014, from AskJAN.com: <http://askjan.org/ERguide/ERGuide.pdf>

Karter, M. J., & Molis, J. L. (2013). *NFPA's "Firefighter Injuries in the United States"*. Quincy: National Fire Protection Association.

LeDuc, T. (2012, October 17). *Firefighter Nation*. Retrieved December 26, 2013, from [firefighternation.com](http://www.firefighternation.com/article/firefighter-safety-and-health/firefighter-fitness-duty-understanding-nfpa-1582): <http://www.firefighternation.com/article/firefighter-safety-and-health/firefighter-fitness-duty-understanding-nfpa-1582>