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NAME JAMES WRYNN NYSIF DIRECTOR

NEW YORK STATE INSURANCE FUND

Workers' Comp.

ADVISOR

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July, August, September 2009

Where You Can Greatly Impact Comp. Costs

Get Them Back, Keep Them Happy

Time is Now For
Return-to-Work

Sample Forms
to Get Started

Case Studies:
Communication
Keys Success

Simple Steps to
Implement RTW

Step-By-Step
RTW Flow Chart

WELCOME
BACK



NYSIF Welcomes Executive Director James J. Wrynn

The New York State Insurance Fund Board of Commissioners announced the appointment of James J. Wrynn as NYSIF Executive Director.

A partner in the law firm of MacKay, Wrynn & Brady, LLP, with offices in Douglaston, New York and Hoboken, New Jersey, Mr. Wrynn's appointment was approved unanimously by the board at its monthly meeting on April 22, 2009 and became effective the same day.

Mr. Wrynn has an extensive legal background counseling agents, brokers, risk retention groups and insurance companies in most lines of insurance and excess insurance, reinsurance, self-insurance and captive insurance. His experience includes knowledge of insurance, accounting and tax issues affecting entities doing business both on and offshore.

He is admitted to the Federal and State Courts in New York and New Jersey, and the United States Supreme Court. His firm specializes in civil litigation and appellate practice, with an emphasis on insurance law. He has designations as both an Associate in Risk Management (ARM) and an Associate in Captive Insurance (ACI).

"I look forward to serving the New York State Insurance Fund," Mr. Wrynn said. "I want to thank Governor David Paterson and the Board of Commissioners for the confidence they have placed in me to guide such an important organization and an experienced staff, and for the opportunity to further the mission of being the leading provider of workers' compensation and disability benefits insurance in New York State."

INSURANCE LAW CAREER BEGAN IN 1982

Mr. Wrynn began his legal career in 1982 in the Manhattan office of McCormick, Dunne & Foley. He has litigated hundreds of cases as a trial attorney in the areas of life insurance, accident and health, property and casualty, general liability, insurance coverage disputes, professional malpractice and product liability.

Mr. Wrynn previously served on the Board of Managers and the Grievance Committee of the Queens County Bar Association, and is a member of the New York and New Jersey State Bar Associations, the New York State Trial Lawyers Association, and the Network of Bar Leaders. He is a past-president of the Brehon Law Society and has served as a board member of the St. John's University School of Law Alumni Association and the Catholic Lawyers Guild-Queens County. He also served as a board member of the New York City Economic Development Corp. and the New York City Business Relocation Assistance Corp.

A life-long resident of Queens, Mr. Wrynn is a graduate of Holy Cross High School, St. John's University College of Business Administration and St. John's University School of Law.

Mr. Wrynn resides in Douglaston with his wife, Maura, an elementary school teacher. They have three children: Katie, a graduate student at the International Business School at Brandeis University, Massachusetts; James, a senior at the State University of New York at Albany; and Kevin, a junior at St. Francis Prep High School.

This Issue

RTW Starts With You

Reintegrating injured workers to the workforce relieves stress on co-workers, improves workplace morale, and is one of the best ways to take control of your claims costs. What's it take? It all starts with **your** commitment to a return-to-work program focusing on education and communication.



Pages 3-7

Safety Cop

Getting Serious About Fall Protection, Part 2 - With Scaffolds

Getting Scaffolds Right

Gary Dombroff, WCP, CSC
Safety Cop

In times past, "ascending the scaffold" meant an appointment with the executioner and certain death. Construction workers and window washers have met the same fate on today's scaffolds when these elevated, temporary work platforms are improperly assembled or anchored, poorly maintained, incorrectly used, or have no fall protection. The U.S. Department of Labor Statistics reported that falls killed 352 construction trade workers in 2007, and 88 worker occupations died due to falls from scaffolding.

Work on and around scaffolds also causes a significant number of lost-time accidents. The Occupational Safety and Health Administration has exacting requirements, found in 29 CFR Subpart L, for the construction, usage, maintenance and erection of fixed, movable and suspended scaffolds.

In addition, awards to injured workers in height-related

and experienced professionals who can ensure correct safe assembly and compliance with OSHA regulations. Employees must train each employee who works on a scaffold on the hazards and the procedures to control the hazards involved in erecting, dismantling, moving, repairing, maintaining, or inspecting scaffolds also trained to recognize associated work hazards.

KEY SCAFFOLD REQUIREMENTS

- Each scaffold and scaffold component must support its own weight and at least four times the intended load applied or transmitted to it. Suspension rigging must support at least six times the intended load. Scaffolds and scaffold components must not be loaded to their maximum intended loads or rated capacities, whichever is less.
- A qualified person must design scaffolds. In some cases for tall or complex scaffolds, an engineer is required.
- Each scaffold platform and walkway must be at least 18 inches wide. If the work area is less than 18 inches wide, guard rails and/or personal fall arrest systems must be used.
- The major protection from falling objects is to always

A Guide to Scaffold Use in the Construction Industry

Small Business Safety Management Series

OSHA 3090 (Rev. 2007)

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Scaffolds Revisited

We couldn't have been more timely with Part 2 of our Fall Prevention series (*Safety Cop WCA April-June '09*, above), on scaffolds. OSHA recently reported scaffolding was its most frequently cited violation in 2008, offering a guide to scaffold use in construction (inset) on its web site.

CORRECTION - A sentence in our scaffold story about Section 240 ("scaffold law") awards should have read: "Section 240 places responsibility for height-related accidents on property owners and employers (unless solely the result of a worker's unsafe act). Awards to injured workers under Section 240 are not covered by workers' compensation insurance."





Return-To-Work: What Are You Waiting For?

Experts say return-to-work (RTW) programs may be the one area in which employers can have the greatest potential impact on reducing workers' comp. claims costs.

As part of workers' comp. reform, the Workers' Compensation Board is actively developing policies and procedures to help insurance carriers and employers implement effective RTW programs. The 2007 workers' comp. reform legislation included incentives for employers with drug, alcohol, safety and RTW programs.

The board issued a statement that called RTW programs "the best way to optimize worker outcomes and manage cost after an injury has occurred. Early

assistance in helping workers return to work...allows injured workers to maintain a positive connection to the workplace and alleviates many of the concerns,

RTW programs may be the one area in which employers can have the greatest impact on workers' comp. claims costs.

fears and frustrations experienced by the worker following a workplace injury."

Moreover, the longer an injured worker is removed from the workplace the higher the cost for the employer and the less likely the worker will return to legitimate employment.

Successful RTW programs give injured workers the chance to take a transitional or light duty job and gradually resume full duties with medical clearance. RTW also becomes a great motivator for employees to re-enter the workforce who may otherwise abuse workers' comp. leave.

Read **important information** about the WCB initiative (**below**); find a **dozen things you should know** about RTW and how to get going with NYSIF's **starter kit (Page 4)**; use the **RTW flow chart (Page 5)**; see how **communication** helps employers minimize costs and get their employees back to work (**Page 6**), and learn **six simple steps to RTW success (Page 7)**.

What are you waiting for?

WCB: Time to Start is Now

'We're asking you to be committed to an RTW program.'

Education, communication and commitment is the road that leads to RTW success, and the New York State Workers' Compensation Board (WCB) is working on making sure that is the road taken by employers, employees and insurance carriers.

"It will take a big change and big commitment," WCB Advocate for Injured Workers Ed Ruff said at a NY Claims Association workshop hosted by NYSIF this spring.

"We're asking you to be committed to an RTW program," Mr. Ruff said. "Let employees know you have RTW. Let them know what you'll do if they get hurt. Let them know you want them back and want to help them get back as fast as possible."

The sooner an injured worker returns to work, the better for all parties, he explained. While missing time, injured workers may encounter social isolation, financial burdens, increased medical treatment and psychological overlay; six months lost time can easily turn into two years.

"It's much more beneficial to everyone concerned to get people back to work," Mr. Ruff said.

WCB Supervisor of Rehabilitative and

Social Services Vincent Meehan advised the WCB will be reaching out to employers to help implement RTW. To that end, the WCB has produced a **claimant pamphlet** that explains their rights and responsibilities under RTW, as well as a **Return to Work handbook** for employers. Both are available from the WCB web

site, along with **Communications Guidelines** about what communications may be properly made by and among claimants, claimants' attorneys, employers and health care providers. In anticipation of formalized RTW policies and procedures, the WCB strongly recommended that all parties make use of these documents at the earliest opportunity.



Boss Critical to Bridging Trust Gap

Nothing counts more than an immediate supervisor, or person perceived as "the boss," in returning an injured employee to work. So say researchers who examined workers' satisfaction with employer response to back injury claims.

Even companies with strong RTW programs can put production concerns ahead of an injured employee's best interests, resulting in a "supervisor's gap" and lack of trust as insurers and medical providers take over. According to a published report, the best way to build trust is with clear, frequent, supportive communication from the supervisor, even if a return to work is not imminent.

Some of the study's findings:

- **The importance of an injured worker's perception of the relationship with the supervisor is likely even greater than that of the relationship with the doctor.** This is something supervisors fail to appreciate.
- All of which requires **people management skills**—active listening, being responsive, showing empathy, validating an employee's pain, demonstrating respect and fairness, and following up.
- **And, engaging the injured employee by communicating that a return to work will speed the healing process.**

One Dozen Things You Should Know About RTW

1. Studies suggest a precipitous decline in recovery after six weeks away from work.
2. After 12 weeks, the probability of returning to a former job is less than 50%.
3. Research shows those who don't return to former employment are out of work three times longer than those who do.
4. Speed RTW by reporting accidents online to NYSIF with **NYSIF eFROI®**.
5. Use **NYSIF eFROI®** to electronically file reportable claims with the Workers' Comp. Board.
6. A strong commitment from the employer, the injured worker and the medical provider are proven elements of RTW success.
7. Communicate frequently with your injured worker, and with your NYSIF case manager for medical/vocational assistance for the injured worker.
8. Be proactive by identifying light duty assignments/workplace modifications that get your employee back sooner.
9. One study found the best way to manage musculoskeletal disorders is to bring employees with MSDs back to work.
10. Employees in a supportive RTW environment who had carpal tunnel syndrome had the greatest success performing their tasks after returning to work.
11. Focus on what injured workers can do, not what they can't do.
12. Transitional positions are not permanent; three months is the recommended maximum to remain on light duty.



The 'RTW Availability Letter' is an important document if your injured employee refuses transitional work.

priority involving them, their doctors and you.

Notice of RTW Case: Notifies NYSIF of a potential RTW participant. NYSIF case managers may also notify you of a potential RTW case.

Job Demands Analysis: Filled in by the employer, this summarizes the employee's current job duties and physical requirements. Sent with the *Doctor Notification Letter*. May be used to identify transitional duty company-wide.

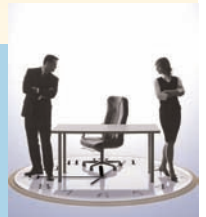
Doctor Notification Letter: Alerts the doctor to your RTW program and the employee's job demands. Instructs the doctor to fill in, sign and

Time to Revise Your Policy?

Need another reason to stay attuned to employees' work restrictions and return them to work as soon as medically possible? According to a published report, a federal judge in Tennessee ruled that an employer could be sued under the Americans with Disabilities Act for not providing an injured worker a light-duty job.

According to the report, two months after receiving his medical release for light-duty work, the employee still had not been offered a light-duty position. After settling his comp. case, he filed a discrimination charge with EEOC, alleging that the employer failed to accommodate his disability by not engaging in the interactive process, or reasonably accommodating his injury.

Although the ADA does not require employers to create light-duty jobs where none exist, and permits job-related requirements due to business necessity, it does require you to attempt to "reasonably accommodate" disabled employees. If your business has a "fully-healed" policy regarding return-to-work, it's time to revise your policy.



return information about the patient's physical capabilities.

Physical Capabilities

Worksheet: Sent with *Doctor Notification Letter*. Completed by the doctor upon completion of examination, and periodically thereafter. Start the

RTW process by giving your worker a copy once an injury is reported.

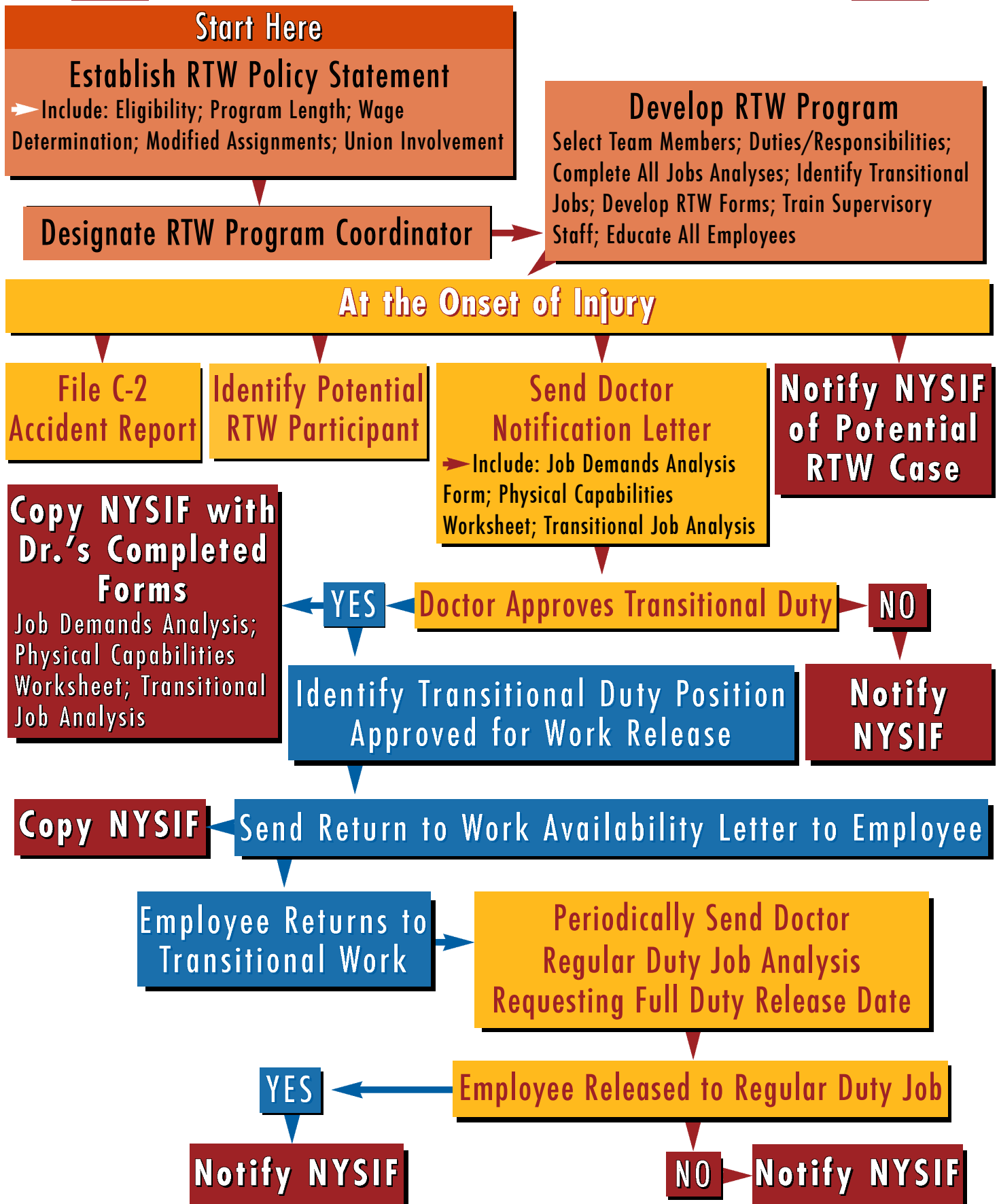
RTW Availability Letter: An important document if transitional work is refused. Send to the employee by certified mail, offering transitional duty.

Forms You Need to Get Started

Use or customize NYSIF's convenient RTW forms to start your own program. Go to nysif.com > *Workers' Compensation* > *Policyholders* > *Return-to-Work* > *RTW Forms & Templates*.

RTW Policy Statement: Explains your policy, tells employees what to expect if they are injured at work, and that their health is a top

RTW FLOWCHART



RTW Requires Early Intervention, Collaboration, Communication

An effective early return-to-work program requires early intervention, collaboration and communication involving NYSIF, the employer, the physician and the claimant. These key elements recently helped NYSIF's Suffolk and White Plains offices successfully return injured workers back to the workforce.

Suffolk Case Manager Glen Semenick and Early Intervention/RTW Coordinator Janet Katz helped a claimant working as a veterinarian attendant return to work in a light duty position after just a few months.

The claimant, whose job duties included restraining animals, assisting the veterinarian with house calls, and scheduling appointments, injured her back lifting boxes.

Noting the claimant's employer had a light duty program in place, Mr. Semenick made a referral to Suffolk's RTW program. Ms. Katz gathered information from the policyholder and kept in communication with the claimant's physician.

WINNING INGREDIENTS

Ms. Katz picks up the story:

"As part of [our] program a job analysis form is sent to the employer. In this instance the employer completed the form describing the physical requirements for a light duty position as a receptionist. In turn, the job analysis and physical capabilities form was forwarded to the claimant's orthopedic physician, who reviewed the description of the light duty position that was available.

"Prior to receiving the job analysis, the attending physician had determined that the claimant suffered a temporary total disability based on the job duties of a veterinarian attendant. However, once he was given the details of the job analysis he was quick to state that the claimant could return to work immediately in the light duty capacity as a receptionist."

Collaboration and communication between Ms. Katz, Mr. Semenick, the claimant, the employer and physician resulted in the claimant only missing a couple of months of work, benefiting the claimant, the employer and NYSIF.

"The RTW program is invaluable and proved to be a win-win situation for all," Ms. Katz said. "It benefits the employer with premium savings, as well as savings in not having to train or hire new replacement staff or overtime costs. Claimants equate themselves as valued employees who can continue to be productive and gainful."

'RTW benefits the employer with premium savings, as well as savings in not having to train or hire new replacement staff or overtime costs. Claimants equate themselves as valued employees who can continue to be productive and gainful.'

Two NYSIF case studies illustrate keys to RTW success.

"Basically, early intervention that leads to a successful return to work is a process of educating the injured worker, the attending physician and our policyholders," Suffolk Claims Manager Catherin Carrillo said. "Most often everyone is under the impression that the injured worker has to be able to return to full duty at the same occupation at which they were injured. However, if a doctor determines the claimant has a physical capability this individual may be able to return to light duty, transitional duty, modified work, or a completely different occupation... The process involves a tremendous amount of communicating."

Communication and collaboration again played a significant role when the White Plains office successfully assisted Ground Handling, Inc. (GHI) with RTW issues.

GHI, a Westchester County Airport contractor with a staff of about 200 employees who perform various airport duties, had more than doubled its staff to manage an increase in flights.

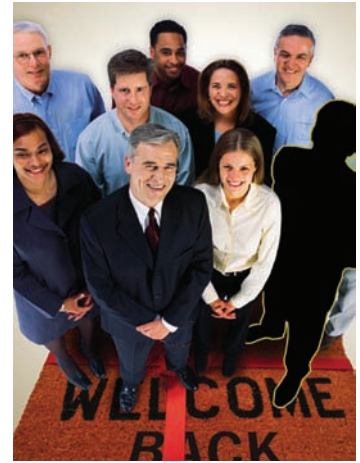
RESULT PLEASES EMPLOYER

NYSIF Claims Services Rep. II Joseph Cimino suggested the White Plains RTW outreach team conduct a visit to GHI after noticing an increase in accidents reported by the company. The White Plains team, including Mr. Cimino, Claims Manager Trevor Jackson, Field Services Rep. Tina Christiano, and Claims Services Rep. II Samuel Samuel, provided workplace safety training for GHI staff.

GHI Manager Jack Barrella was so impressed with NYSIF's team he wrote a letter thanking them, and Mr. Cimino, in particular, for their help with getting two GHI employees back to work.

"I would like to thank you and your staff for your assistance in resolving a number of workers' comp. issues we had outstanding," Mr. Barrella wrote. "I also am very pleased to report that [two claimants] have returned to work. As a result, we have no one out of work due to injuries."

[See page 7](#)



Six Steps to Implementing RTW for Your Business



Develop a written RTW policy. A sample is offered @ nysif.com.

1. SET CLEAR GOALS AND POLICIES

Communicate clear RTW goals and procedures throughout the company. **Developing a written RTW policy is most important.** Indicate that modified duty assignments will be consistent with medical guidelines. Clarify time limits on transitional assignments. Specify that when such work is available, participation is mandatory. Consider existing company policies and labor agreements.

2. PICK A PROGRAM COORDINATOR

Select one person, such as a safety or human resources manager, to implement and coordinate your program to ensure accountability. Define that person's responsibilities, including:

- Communicate program information to supervisors and workers.
- Monitor recovery status of injured workers.
- Manage correspondence from injured workers, medical providers and NYSIF.
- **Work with supervisors to ensure appropriate, ongoing and documented communication with injured workers.**

3. IDENTIFY TRANSITIONAL DUTY

Assess actual demands and essential elements of each job in your workplace. Use this information to develop modified

assignments for injured workers who can't perform their usual duties. **Finding ways to make use of workers' skills and knowledge is critical.**

Explore part-time employment, temporary jobs, alternative tasks, job sharing, jobs in other departments, transitioning through different jobs, and job modification. Co-workers can handle aspects of a job that a recovering worker cannot perform.

Recovering workers, in turn, can do tasks typically done by co-workers.

4. DEVELOP STANDARD FORMS

Standard forms (**Page 4**) ensure consistency, helping supervisors gather and communicate essential information.

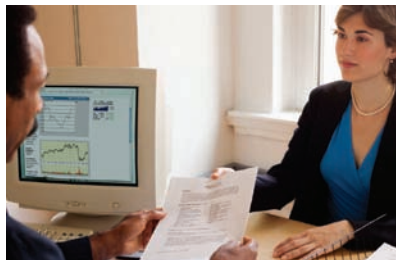
5. PROVIDE TRAINING

Train supervisors in RTW principles and procedures, including:

- Accident reporting/investigation;
- **Need for early/ongoing communication;**
- Job modifications/alternative assignments;
- Methods of documentation.

6. MAINTAIN COMMUNICATION

Supervisors should regularly reach out to the injured worker and show interest in having the worker back on the job. Also maintain contact with the worker's medical team, emphasizing your RTW policy.



Designate one RTW coordinator

KEYS TO RTW: COLLABORATION, COMMUNICATION

From 6

One of the claimants, a customer service representative injured her knee and back in a slip and fall. The other, a ramp agent, injured his back while loading bags onto an aircraft.

"We communicated on a regular basis with the doctors and we authorized treatment," Mr. Cimino said. "We don't want people 'falling' into the cracks. We take an active role and GHI takes an active role."

The ramp agent returned to work, missing one day, and the customer service rep. returned to work after 38 weeks. Both returned to their original positions.

"A policyholder should have an RTW program because it helps the injured

'Most often everyone is under the impression that the injured worker has to be able to return to full duty at the same occupation. However, this individual may be able to return to light duty, transitional duty, modified work, or a completely different occupation.'

worker to recover faster," White Plains Claims Manager Trevor Jackson said. "The RTW program reduces the cost of the claim and in so doing leads to a reduction in experience rating, thereby reducing premium costs."

"RTW limits the liability of everybody," Mr. Cimino said. "We limit the liability of NYSIF, we limit the liability of the employer, and, as far as the claimant goes, we make them feel like they have an active role in society again."

A successful RTW program means everyone is actively working together to achieve the goal of getting the injured employee back to work.

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Send WCA comments to jmesa@nysif.com

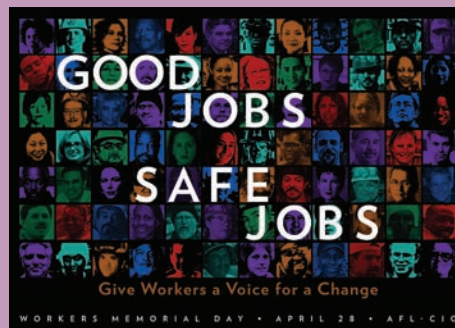
Workers' Comp. Advisor

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World Marks Workers Memorial Day

Nations around the world, including hundreds of localities on all continents observed the World Day for Safety and Health at Work April 28, internationally recognized as Workers Memorial Day, and hosted events aimed at raising awareness about what International Labor Organization Director-General Juan Somavia called the "human tragedy" of unsafe work.

"Much of this tragedy involving millions of workers each year plays out unseen and unheard...", he said. "Yet so much can be prevented."



Monthly Safety Topics *will return next issue*

Find safety topics at nysif.com > [Safety & Risk Management](#) > [Small Business](#)

July Heat-Related Exposure

August Restaurants

September Electrical Safety (GFCI)



Visit nysif.com for free safety resource material, including the monthly safety topic, to use with your accident prevention program.

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