

VLCT PACIF Loss Control Guidance

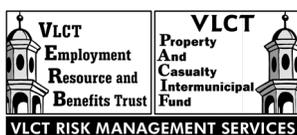
Developing a Transitional Return to Work Program

Operating a well planned and clearly documented transitional return to work (TRTW) program is a very effective way for an organization to gain control over its workers' compensation costs. Providing modified duty for employees who experience work-related injuries (or illnesses) generally leads to faster recoveries and has a cascading cost-saving effect: those medical and indemnity costs stay relatively low, and, as the organization's overall workers' comp costs decrease, its "experience mod" will be reduced, resulting in lower coverage costs.

This guidance is intended to introduce PACIF members to the most important elements of a successful TRTW program. We encourage you to contact your PACIF loss control consultant for help as you develop the most effective policy and procedures for your municipality's size and operations. If you have questions or would like more information, please email us at losscontrol@vlct.org or call 800-649-7915.

When Establishing a TRTW Program

- Develop a clear written program that expresses management's commitment to bringing injured employees back to work, when feasible, and identifies the general responsibilities of each participant. Specify that this program is only for work-related injuries and illnesses and will be implemented on a case-by-case basis.
- Because not every work restriction can be accommodated and there are budgetary and other issues to consider, the TRTW policy should give the municipality some flexibility in administering the program. Nonetheless, we recommend that you make every effort to use the program and administer it consistently.
- Develop a process for providing an offer of transitional duty. In some cases, making the offer in writing may help your adjuster deny certain benefits if the employee chooses not to accept the offer. Smaller municipalities might not find this procedure necessary.
- Make sure that the people who are responsible for filing/reporting workers' compensation claims and coordinating the return to work assignments understand their roles and have the time to perform these tasks.
- Develop a formal means of monitoring employee comfort and work actions when they are performing transitional work. Typically, the supervisor needs to be involved in this. The supervisor is also generally responsible for monitoring attendance, work performance, etc.
- Vermont allows employers to designate a medical provider for employees to go to for initial medical treatment of work-related injuries. We recommend choosing a medical practice that is acquainted with the return to work process and principles, and building a relationship so they understand your commitment to TRTW and learn the types of transitional duties you have available. If you do not know of a quality provider in your area, please contact losscontrol@vlct.org for suggestions.



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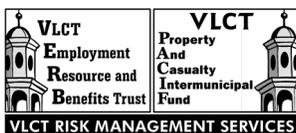
- Develop an extensive list of tasks and pieces of jobs that are appropriate for the TRTW program. Identifying potential modified duty tasks in advance of an injury makes the process of finding suitable task(s) much easier when an injury occurs.
 - Consider the physical (also called “functional”) requirements of these tasks and seek work that is suitable for recovering from the most common injuries. For example, for back strains, identify seated and standing tasks that have very limited lifting requirements. Your PACIF Loss Control Consultant can help you with this process.
 - Unless contractual obligations require otherwise, do not limit modified duty assignments to the injured employee’s department. Including work from many departments not only expands the range of suitable TRTW tasks: it also helps various departments to see progress made on important-but-not-urgent work that their staff can’t normally find time for, and it lets employees experience other parts of the organization.
- Some organizations find it helpful to create a separate budget or line item to cover transitional duty wages. This approach creates an *incentive* to employ these workers because the salary (during recovery) does not come out of the recovering employee’s department budget. This can be especially effective for public safety departments.

Communicate Injury-Related Policies to All Employees

- Make sure employees know to report every work-related injury or near-miss incident right away, even if medical treatment is not clearly necessary. (Having a supervisor investigate each accident/incident promptly and thoroughly is also helpful to the claims management process and to preventing future accidents. Related information is included in PACIF’s online [Injury Reporting, Medical Treatment, and Incident Review Toolkit](#).)
- Notify all current employees about Transitional Return to Work principles and process.
- Include an explanation of your TRTW program in every new employee orientation.
- Review and update the information and method of communication to keep it accurate and effective.
- Periodically remind employees about the program.

When an Employee Is Eligible

- Maintain regular contact with the injured employee while he or she is still homebound. When injured workers do not have a modified duty work release or their restrictions cannot be accommodated, staying in regular contact helps assure them of the employer’s interest in their return. This contact can also improve communication on issues of medical treatment and recovery status.
- Always provide any medical documentation, return to work notes, etc. to the claim adjuster as quickly as possible. This helps the adjuster monitor the claim more closely and ensures that the employee receives benefits in a timely manner. This is especially important for claims that involve lost work time.
- Follow your process for providing an offer of transitional duty.

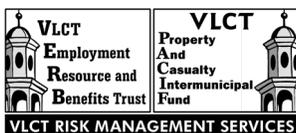


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- It is best to record the terms of each transitional duty arrangement in a Transitional Duty Agreement form that is understood and signed by the employee as well as his/her supervisor and a higher-level manager. The written agreement is an excellent format for clarifying employee and management responsibilities whenever transitional duty is in effect. If the employee's medical restrictions are adjusted by the healthcare provider, all parties should sign a new, updated, agreement.
- When the recovering employee is performing transitional duties, the supervisor should monitor not only that the employee is doing the modified work in the agreed-upon schedule, but also that the modification seems appropriate for the employee's comfort and recovery process.
- Employees who are performing modified duty tasks should adhere to work restrictions and be comfortable raising concerns if (a) they feel work is beyond their physical abilities, (b) they experience an increase in symptoms, or (c) the work offered differs from the medical provider's work restrictions.
- Feel free to use common sense when medical providers issue restrictions or even return an employee to full duty. In some cases, it may be prudent to provide a transition period of work hardening for the employee, depending on the nature of the injury, the individual, the medical provider, and the job.
- Pay the employee at his/her normal wage rate for hours worked. This is the most effective way to control indemnity costs and it eliminates the malcontent that can arise when someone is being paid less than their normal wage.

Further Post-Injury Considerations

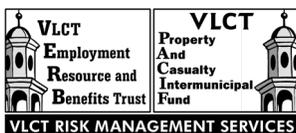
- In cases where transitional return to work is not a reasonable option, e.g. the employee will likely be out of work for an extended period of disability, many employers will run FMLA (Family Medical Leave Act) and/or VPFLA (Vermont Parental & Family Leave Act) mandates concurrent with the period of workers' compensation disability. If your municipality is doing or considering doing this, make sure to have any such policy reviewed by legal counsel. (This is not a TRTW matter: it is a separate personnel issue that we note here for your information only.)
- Vermont Workers' Compensation law does not require employers to hold a position open for an injured worker when there is a legitimate business need to fill the position. (Note, however, that state VPFLA and federal FMLA statutes and their job protections still apply.) For employees who are terminated from employment while they are out of work due to a work-related injury, Vermont mandates certain employee "reinstatement rights."
 - According to 21 VSA § 643b, these employees must be offered reinstatement to the first available position suitable for the employee given the position the employee held at the time of the injury.
 - To be eligible for reinstatement, the employee must stay in regular communication with the employer, provide their contact information, and confirm that they are interested and



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available for work. Employees who fail to fulfill these requirements would likely not qualify for reinstatement.

- We encourage you to discuss these issues with the claim adjuster if you have any questions about it.
- In any situation where termination of employment is being considered, ***always consult with legal counsel prior to taking action*** to minimize the potential for a subsequent employment practices liability claim against the municipality. It is crucial that the municipality's personnel policies be consistent, comply with applicable statutes, and be applied in a consistent manner. PACIF members can use our EPL Referral Program to receive up to three free hours of counsel on a particular situation from an attorney who specializes in employment law. To seek help with employment issues, write to EPLReferral@vlct.org or call 800-649-7915 and speak with the PACIF Human Resources Consultant.



VLCT PACIF Loss Control Services
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