

# Propel HR NEWSLETTER

HUMAN RESOURCES

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## AN EASY WAY TO GET YOURSELF SUED

Return to work situations are the quicksand of the workplace.

With no visible solid ground, a slight misstep can be fatal.

### AN EMPLOYMENT LAWYER'S NIGHTMARE:

*One morning the company president calls me. "I just got a voice mail from my secretary, Laura. She's been off work for nearly two months because of her carpal tunnel problems, but now her doctor says she can come back to work for a few hours every day if we redesign her workstation."*

*Great," I say. "We've missed Laura."*

*"No we haven't," says the President. "Laura was always a pain in the keister and I haven't missed her a bit. I like the temporary secretary better. And what I realized while Laura has been gone is that she didn't work very hard and was overpaid for what she did. She's just gaming the system," he continues. "I want you to call Laura and tell her we can't use her. She's fired. Then we can hire the temp, and Laura can sit home and collect unemployment for a while."*

#### WHAT'S THE PROBLEM?

The only problem for Laura will be deciding which law(s) to sue her employer over. Mr. President, please consider the following before you hand Laura her final paycheck:

THE AMERICANS WITH DISABILITIES ACT (ADA)  
FAMILY MEDICAL LEAVE ACT (FMLA)  
WORKERS' COMPENSATION RETALIATION  
WRONGFUL DISCHARGE  
BREACH OF IMPLIED CONTRACT  
WRITTEN CONTRACT

In real life these situations occur more frequently than any manager would like to admit. Recently, a jury in Colorado awarded more than \$8 million dollars to a plaintiff who was not allowed to return to work several years after recovering from a brain aneurysm. And the company had to pay the plaintiff's attorneys' fees and costs. There are many considerations that must be thought through to avoid rash decisions that can cost the company millions. Propel HR is here to help you with such decisions and will help you weigh the consequences of each.

*Excerpts from "In This Corner", Workforce Management, November 2004*

### DID YOU KNOW?

The likelihood that a person will return to work decreases with each passing day, from 90 percent at four weeks to a mere 2 percent after 52 weeks according to a joint study by Intracorp, the Washington Business Group on Health and the Journal of Workers' Compensation. The same study found that employers could save \$3 to \$10 for every \$1 invested in a return-to-work program.

### WHAT IS A "RETURN TO WORK PLAN" OR "LIGHT DUTY PROGRAM?"

When work related injuries occur, "Return to work" or "Light Duty" programs help find ways to get employees back to work as soon as the doctor releases them for even partial duty. Whether it is a restriction of physical activities or the number of hours their duties can be performed, employers and insurance companies know it is important to have the employee out of the house as soon as possible.

### What one company did.....

Dannon Yogurt knows that the best laid plans for workplace safety can't prevent every injury. Prevention is best, but when an injury occurs, they work with medical doctors to modify an injured employee's existing job whenever possible. Sometimes, however, an injury is such that even modification of normal job duties is impossible. On those occasions, the Volunteer Center of North Texas tries to match Dannon employees with local nonprofits in need of additional short-term staff. This has made a big impact on Dannon's bottom line. The company has reduced lost workdays by about 30 percent. Medical costs dropped between 32 and 35%. Recovery time has been slashed 27%. "The program reinforces the habit of going to work each day, which is a very strong trait. The quicker employees get back to doing work, the quicker their healing," says Joe Baldwin, Dannon's workplace safety manager. For example, some employees work at the local hospital in the gift shop or the information desk. Dannon pays a portion of the employees' wages while they work for nonprofits. The employee earns higher wages (typically) than on workman's compensation and stays physically and mentally challenged. "On-the-job rehabilitation plays a critical role in recovery." Says Jeffrey Jordt, a Chicago-based senior vice president with The Segal Company, a consulting and actuarial firm.

This is just one creative way to make the best of a hard situation for you and your employees. **Propel HR** is here to **help** you discover cost effective options for you and your employees when workers' compensation injuries occur. We will help you determine the short term and long term effects of your decisions and serve as a cheerleader to your employees to get them back to work as soon as the doctor will allow. Please contact **us** if you have any workers' compensation questions or concerns. Please note: We are here to help with claims **and** injury prevention as well.

### WATCHOUT FOR....

- Companies should never make employees feel as if money comes ahead of their well-being.
- Don't be skeptical. Sure there is a small percentage of employees with low work motivation who may use an injury or illness to avoid returning to work, but most can and do want to return to work. In addition to the economic incentive, work is a strong source of dignity and self-esteem.
- Don't assume accommodations (changing the workplace to meet the limitations of a returning injured or ill employee) are too expensive. It is estimated that 70% of accommodations cost less than \$500 and 20% cost nothing at all.

## ADA, FMLA and Worker's Compensation

### The Bermuda Triangle of Employment Law

**Q.** How can an employee be covered under all three laws at once?

**A.** Overlapping coverage by each of these laws is possible because each law serves different purposes and provides different although sometimes overlapping benefits. Workers' Compensation may entitle an employee to payment of medical expenses as well as payment for time away from work. The FMLA entitles the employee to be absent from work and to receive group medical coverage for other medical treatment and for dependents, and the right to be restored to the employee's same or equivalent position. The ADA, may entitle the employee to a reasonable accommodation to enable him/her to return to the original position or reassignment to a vacant position and otherwise ban disability discrimination.