

LASSIE, CHILL OUT!

QUESTION: We operate an endangered animal care facility and zoo. Our staff veterinarian, Finn, experienced an on-the-job injury last week when he suffered a playful but powerful blow by Lassie. Finn was diagnosed with a concussion and has been off work since then.

Because of the nature of Finn's injury his doctor says he is unable to return to his regular duties for now. Our workers' compensation insurance carrier has advised us that we should bring Finn back to work doing a modified or light duty job to minimize any increase to our workers' compensation insurance premium rates.

It is possible that we could use Finn on the night shift for basic zookeeper duties, like feeding and cleaning up after the animals. Due to his injuries Finn probably wouldn't be medically released to drive the four-wheelers our zookeepers usually use, but perhaps he could ride along with one of the other maintenance staffers.

Finn is an esteemed professional and well known for contributions to the study of certain endangered species. As a result, we are hesitant to ask him to return to work doing zookeeper duties, and would rather wait and see if he will be able to return to work as a vet. Do we have to offer him a modified or light duty position in the meantime?

ANSWER: Employees who suffer an on-the-job injury and have an accepted (also called compensable) workers' compensation claim have a right to **reinstatement** to their original job if their physician releases them to perform that job. Although this is not the case with Finn, he still has some rights to go back to work with you if he can perform some (albeit not all) duties. This is called **reemployment**, and you have an obligation to offer him the first "available and suitable" position that he can perform.

"Available and suitable" means only those positions which are currently vacant, regularly occurring, and which the worker is qualified for and medically released to do. "Suitable" means a position as similar as practicable to the worker's former position in compensation, duties, responsibilities, skills, location, shift and duration.

So you may certainly follow your insurance carrier's suggestion and create a light-duty position for Finn. For many reasons, that could be a very wise business decision. But remember that this may not necessarily satisfy the above BOLI rule that the employee be placed in the first suitable job available. So if the first light duty job does not meet the definition of "suitable" you may still need to offer the employee a suitable position when one becomes available.

The injured employee's right to reemployment ends as soon as the employee does any of the following:

1. participates in vocational rehabilitation;

2. Accepts suitable employment with another employer (after being declared medically stationary, which essentially means that the employee is not expected to get any better or any worse from a medical perspective);
3. refuses the employer's bona fide offer of an available, suitable position;
4. Fails to make demand within 7 days of notification of medical release to be reemployed in a light duty position; or
5. Clearly and unequivocally abandons employment with the employer.
6. three years have elapsed from the date of injury, even if none of the above occurs.

Let's not forget that there could be yet another wrinkle: if Finn is not physically able to perform any current available and suitable positions, but maybe could do so with reasonable accommodation (and he meets the definition of a "person with a disability" under the Americans with Disabilities Act), you may have to add this subject to your list of things to discuss with him. There is more information about this in previous columns, as well as on our website.

So what if Finn makes a full recovery and is now ready to perform his original job? We'll talk about that in next week's column.

For more information about this and other important information for Oregon employers, please visit our website at www.oregon.gov/boli/ta. Or you can call us at 971-673-0824.

See you in December at our 17th Annual Conference in Portland!