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**ON BEHALF OF THE
SOCIETY FOR HUMAN RESOURCE MANAGEMENT**

**SUBMITTED TO THE
U.S. HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON SOCIAL SECURITY**

**HEARING ON
“SECURING THE FUTURE OF THE DISABILITY INSURANCE PROGRAM”**

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Introduction

Good morning Chairman Johnson, Ranking Member Becerra, and distinguished members of the Subcommittee. My name is Nadine Vogel, and I am Founder and President of Springboard Consulting LLC in Mendham, NJ. Springboard collaborates with multinational corporations, federal agencies and other organizations on initiatives to successfully mainstream disability in the global workforce, workplace and marketplace. I am the author of *Dive In: Springboard into the Profitability, Productivity and Potential of the Special Needs Workforce*. Thank you for this opportunity to testify before the Subcommittee at this fifth hearing in the series titled "Securing the Future of the Disability Insurance (DI) Program."

I appear before you today as a member of the Society for Human Resource Management (SHRM), the world's largest association devoted to human resource (HR) management. Representing more than 260,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India. I am also a member of SHRM's Workplace Diversity Special Expertise Panel.

Mr. Chairman, I commend you for holding this hearing on this important topic. As the Founder and President of Springboard Consulting, my professional goal is to collaborate with organizations to encourage the hiring and retention of individuals with disabilities. Employers that capitalize on the abilities of this segment of the workforce see improved productivity, retention and profitability. Personally, my husband and I are parents of two beautiful girls who have special needs. I understand firsthand the issues that individuals who have disabilities and their families face. I am the founder and past president of the board of SNAP, Special Needs Advocate for Parents; a member of the New Jersey State Employment & Training Commission Disability Issues Committee; and a Founding Board Member of the Society for Diversity.

In today's economy, organizations must compete in the global market for skilled, talented employees, while managing their labor costs and expenses to remain competitive. HR professionals and employers must also address how to manage their business when faced with challenges such as employee absences, added workload for colleagues, and the impact on productivity due to disability or illness. Proactively keeping employees at work who are experiencing impairments and transitioning employees who have experienced a disability back into the workforce has value to the employer in mitigating some of this impact while also retaining a productive employee. This effort also has the added value of meeting the individual employee's needs. However, even employers with very comprehensive disability management programs can experience challenges.

My comments will describe the need for employment opportunities for the disabled, SHRM's efforts to promote disability employment, background on federal

return-to-work programs, challenges to disability employment, and successful employer stay-at-work and return-to-work strategies.

SHRM's work to promote employment of individuals with disabilities

As we move away from the depths of the recession, employers and HR professionals continue to confront persistent gaps between the skills of unemployed workers and the skills sought by employers to fill specific positions. Recent SHRM research reveals that, in the current labor market, more than one-half (52 percent) of employers reported difficulty recruiting for specific jobs.¹ At the same time, there are pools of workers that might serve as a source of skilled employees: military veterans and individuals with disabilities. According to the Bureau of Labor Statistics, the unemployment rate for individuals with a disability was 15 percent in 2011.² Whether born with a disability or acquiring one as a result of age, accident, illness, or military service, these individuals are often educated and talented and are people that this country is in great need of: committed, skilled, innovative talent. The challenge for employers is developing an approach that recruits and retains these talented employees while successfully navigating federal law and programs.

In my experience, almost all employees who suffer an accident, illness, or develop a disability want to remain at work or get back to work as quickly as possible, even if not in the same capacity as before the onset of the impairment. Returning to work improves self-esteem that comes from being independent and able to support oneself as well as contribute to an organization, rather than seeking lifetime care.

Work is important to people and is a large part of what defines them. Prolonged absence from work impacts the family not only financially but it also affects employees' emotional well-being. Experienced professionals recognize that the longer employees are out of work due to disability, the more likely they are to become disconnected from the employer and the benefits they receive from working. According to a report by the Government Accountability Office (GAO), an injured or disabled worker who remains out of work for more than six months has only a 50% chance of returning to work at all.³ Intervening to help employees stay at work or transition back into the workplace quickly following a disability not only improves their recovery, it also enhances their self-image and reduces stress on their families. It also enhances their commitment to their employer as an employer of choice.

¹ Society for Human Resource Management (2011). The Ongoing Impact of the Recession—Recruiting and Skill Gaps SHRM Poll.

² U.S. Department of Labor, Bureau of Labor Statistics (2012). Employment of persons with a disability, 2011.

³ U.S. Government Accountability Office, Health, Education and Human Services Division (1996). Return-to-Work Strategies From Other Systems May Improve Federal Programs. <http://www.gao.gov/assets/160/155504.pdf>.

SHRM and its members have a long tradition of promoting effective practices for advancing equal employment opportunity for all people, notably including individuals with disabilities. HR professionals strongly support the goal of increasing the employment of people with disabilities, and work every day to help individuals stay at work and return to work in the event of a disability.

SHRM created a Disability Employment Resource webpage that offers its members and their organizations a wealth of resources, articles and links to help source, recruit, retain, and develop people with disabilities. SHRM also provides training through conference programming and webcasts to its members on disability law and effective employment practices. SHRM's member organizations regularly engage in outreach efforts to civil rights and disability organizations, both as part of their current affirmative action obligations and as a sound business practice.

SHRM has also partnered with many national organizations to promote disability employment. Since 2006, SHRM has partnered with the Department of Labor's Office of Disability Employment Policy (ODEP), which provides national leadership by developing and influencing disability employment-related policies and practices affecting an increase in the employment of people with disabilities.

The Employer Support of the Guard and Reserve (ESGR) is a Department of Defense organization that promotes cooperation and understanding between Reserve component members and their civilian employers and assistance in the resolution of conflicts arising from an employee's military commitment. SHRM signed a statement of support for ESGR and the more than 1.2 million citizens from all walks of life who have volunteered to serve during two long and difficult wars.

In addition, the U.S. Department of Labor's Veterans' Employment and Training Service (VETS) provides resources to assist veterans and service members to boost their employment opportunities. Both of these organizations help employers find, hire and retain skilled military service members.⁴

As you can see, SHRM is a staunch advocate for hiring individuals with disabilities and promoting programs and policies that facilitate individuals returning to work as quickly as possible. With the breadth and scope of the Society, there is a tremendous opportunity for additional government agencies to directly partner with SHRM and its members on such solutions.

In 2008, SHRM and other employer associations joined with several disability advocacy organizations to reach an agreement on amending the Americans with Disabilities Act of 1990 (ADA). The ADA protects current employees and job applicants with disabilities from discrimination in employment. The law

⁴ Society for Human Resource Management (2012). Military Employment Resource Page. <http://www.shrm.org/hrdisciplines/staffingmanagement/Articles/Pages/Military.aspx>

defines “disability” as “a physical or mental impairment that substantially limits one or more of the major life activities of such individual.” Advocates and employers alike were concerned that a handful of Supreme Court holdings in the preceding decade (including *Sutton v. United Airlines* [1999] and *Toyota Motor Manufacturing Kentucky Inc. v. Williams* [2002]) had narrowed the definition of disability, and thus the protections, contained in the ADA.

The resulting effort led to the ADA Amendments Act (ADAAA), which was signed into law by President George W. Bush in 2008. The effect of the law is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability.

Finally, SHRM collaborated with the Cornell University ILR School Employment and Disability Institute on a research study released this year about organizational policies and practices related to employing people with disabilities. This series of research findings also analyzes what metrics organizations track for all employees and employees with disabilities and any barriers that organizations experience with employment or advancement for people with disabilities. The survey of more than 600 HR professional respondents was released in three parts: 1) Recruitment and Hiring, 2) Training, and 3) Retention and Advancement. The survey’s key findings are:

- Most employers have policies and practices related to the recruitment and hiring of people with disabilities – Nearly two-thirds (61%) of organizations indicate including people with disabilities explicitly in their diversity and inclusion plan, 59% require sub-contractors/suppliers to adhere to disability nondiscrimination requirements and 57% of organizations stated having relationships with community organizations that promote the employment of people with disabilities.
- Effectiveness of policies and practices – Organizations believe that requiring sub-contractors/suppliers to adhere to disability nondiscrimination requirements (38%), including people with disabilities explicitly in diversity and inclusion plans (29%), and having explicit organizational goals related to the recruitment or hiring of people with disabilities (34%) were very effective practices.
- Larger organizations are more likely to have policies and practices related to recruitment and hiring in place compared with smaller organizations. Publicly owned for-profit organizations also are more likely to have some policies and practices related to recruitment and hiring in place compared with privately owned for-profit organizations and nonprofit organizations.⁵

⁵ Society for Human Resource Management and Cornell University ILR School Employment and Disability Institute (2012). SHRM Survey Findings: Employing People with Disabilities – Practices and Policies Related to Recruiting and Hiring Employees with Disabilities.

Federal return-to-work programs

There are several other federal programs that attempt to provide a transition from disability to work for individuals. These are:

- The Social Security Disability Insurance (SSDI) program – SSDI pays cash benefits to adults younger than age 66 who are judged to be unable to perform substantial work because of a disability, but who have worked in the past. SSDI also pays benefits to some of these adult dependents.⁶ The original program was not set up to handle all of the age-related disabilities that come as a result of people living longer and with today’s economy, more employees are working longer, thus placing a bigger strain on the SSDI program.

Unfortunately, the definition of disability and eligibility for SSDI is outdated and reflects a “medical model” rather than a functional one. Contrary to SSDI definition, the ADAAA uses a functional definition of disability – focusing on what the employer can do through the reasonable accommodation process (assistive tools or devices, restructuring the position, design of the work station, etc.) so the employee can be successful rather than focusing on the disability itself and what the person cannot do.

- Protection and Advocacy for Beneficiaries of Social Security (PABSS) – PABSS is a network of Protection & Advocacy projects in all 50 states and U.S. territories. These programs help beneficiaries navigate and provide instruction through the various programs offered and any difficulties they face, including: Employment Networks, Social Security Disability Insurance and Supplemental Security Income beneficiary rules, legal issues, and employment issues.
- Ticket to Work Program – Social Security’s Ticket to Work Program is free, voluntary and available to most people who receive SSDI or Supplemental Security Income (SSI) benefits because they are disabled or blind. Ticket to Work pairs each beneficiary to an Employment Network or State Vocational Rehabilitation agency, for either reentrance to the workforce or to receive additional vocational training.

Eligible beneficiaries may choose to assign their Ticket to an Employment Network (EN) of their choice or to a State Vocational Rehabilitation (SVR) agency to provide training, counseling, support services and job placement assistance. The EN/SVR, if they accept the Ticket, will coordinate and provide appropriate services to help the beneficiary find and maintain employment.

⁶ Congressional Budget Office (2010). Social Security Disability Insurance: Participation Trends and Their Fiscal Implications. July 22, 2010.

- Work Incentives Planning and Assistance (WIPA) Projects – WIPA helps beneficiaries understand their options when they try to enter the workforce. The 102 WIPA projects across the U.S. and the U.S. territories work with SSA beneficiaries with disabilities on job placement, benefits planning, and career development.
- Vocational Rehabilitation – All 50 states have a Vocational Rehabilitation (VR) agency that provides trade-specific training with the aim of gaining employment.

In addition to the programs above, there are several federal tax incentives for employers to hire the disabled. These include:

- VOW to Hire Heroes Act Tax Credit – On Nov. 21, 2011, President Barack Obama signed into law VOW to Hire Heroes Act (P.L. 112-56), which provides an expanded work opportunity tax credit to businesses that hire eligible unemployed veterans. The Vow to Hire Heroes Act continues the Work Opportunity Tax Credit — already in existence — for veterans with service-connected disabilities. The tax credit offers a maximum of \$4,800. In addition, it offers businesses a new tax credit of:
 - 40 percent on the first \$6,000 in wages (up to \$2,400) for hiring veterans who have been unemployed at least four weeks.
 - 40 percent on the first \$14,000 in wages (up to \$5,600) for hiring veterans who have been unemployed for longer than six months.
 - 40 percent of the first \$24,000 in wages (up to \$9,600) for hiring veterans with service-related disabilities who have been unemployed for longer than six months.
- The Work Opportunity Tax Credit (WOTC) – A tax credit granted to employers who hire SSDI and SSI beneficiaries. The credit is worth up to 40 percent of the first \$6,000, or up to \$2,400, in wages paid during the first 12 months for each new hire.

SHRM members report mixed experiences in capitalizing on WOTC. Some have shared that WOTC encouraged their organization to hire welfare recipients, while others have explored the credit and decided the paperwork burden made the credit valueless to them.

Employer Challenges to Disability Management Programs

Despite widespread support for disability employment, employers face myriad practical, legal and regulatory challenges in offering a disability management program.

- Differing Federal Definitions of Disability – As described in the ADA, definitions of work should rely on the essential functions of a job rather than a more general job description.
- Vocational Rehabilitation Programs – Unfortunately, VR state offices receive a tremendous amount of funding to work directly with employers on stay-at-work and return-to-work efforts. However, in my experience, the VR programs do not understand corporate America and the culture, language, and processes of employers.
- Myriad Federal and State Laws – Compliance with applicable federal laws is maddeningly complex. Despite their merits, the ADA, Family and Medical Leave Act (FMLA) and workers’ compensation laws are referred to as “the Bermuda Triangle of HR.” They are particularly complex, overlapping and frustrating for small employers to administer — particularly for employers administering a return-to-work (RTW) strategy. Those three and other statutes are discussed here:
 - ADA — In light of the enactment of the ADA Amendments Act of 2008, the key point to focus on now is whether discrimination occurred, not whether an individual has a disability. This shift in focus may make RTW programs more difficult to “sell” to small business. Some employers may feel under the new analysis that it may be safer to do less for all than more for some.
 - FMLA — Under the FMLA, providing same pay during light duty creates tension among co-workers. Time spent working light duty does not count towards FMLA leave. Reduced schedule leave equals infinite FMLA leave (employees never exhaust 480 hours). An employee retains protected right to decline an offer of light duty work, while an employee out on non-FMLA medical leave has no such protected right. Intermittent FMLA continues to pose administrative challenges for employers in terms of them being able to ensure appropriate staffing to meet the needs of the business on a day-to-day basis and ensure they have the current information and updates to provide the appropriate approvals. Other employees may request similar workplace equipment and modifications, unaware that an accommodation for a disability was made. For those on light duty, concerns arise surrounding the impact the employee’s future FMLA leave may have on staffing needs and how the organization can manage its work requirements in the long term. Extension of leave beyond FMLA requirements, protected by the ADA, may involve a prolonged absence.
 - Workers’ compensation – Workers’ compensation (WC) is a form of insurance providing wage replacement and medical benefits to

employees injured in the course of employment. All 50 states and the District of Columbia run WC programs. There are opportunities to partner with WC carriers to assess methods for balancing Return to Work (RTW), gainful employment and fiscal responsibility. As mentioned above with regard to FMLA rights, an employee has a right under FMLA to decline an offer of light duty work. Declining the opportunity to work light duty may, however, disrupt or stop the employee's receipt of continued benefits. This strategy is similar to that described in the GAO report referenced earlier in my remarks, e.g., a purpose of the study was to assess ways to reduce increasing DI costs paid by government agencies.

- FLSA and state wage and hour laws – Flexible staffing models such as Alternative Work Schedules (AWS) that include a 10-hour-a-day, 4-day workweek known as a 4-10 workweek must be implemented with consideration to federal and state wage and hour laws. Employers may find they inadvertently create increased labor costs when such models result in overtime that was not budgeted for nor anticipated or that violates state wage and hour laws that mandate overtime for hours worked in a day (such as in California) or in one of at least 14 states that limit or restrict mandatory overtime for certain professionals.
- Covered federal (sub)contractors and Executive Order 11246 – Executive Order 11246 prohibits federal contractors and federally-assisted construction contractors and subcontractors, who do over \$10,000 in Federal government business in one year, from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. For many small employers, it is good news and bad news when they are awarded a government contract or subcontract and exceed the 50-employee threshold for the first time. On one hand, they are very excited about their success. On the other hand, they are also sometimes overwhelmed at the task ahead of them. Such contractors will quickly recruit qualified candidates in numbers greater than ever before to support the new contract. Then, I find more often than not they are stunned to learn about their obligations to now not only draft written affirmative action plans (Plans) but to administer those Plans and maintain all the corresponding documentation. With regard to the recruitment, selection, hiring, training and other employment activities related to persons with disabilities, covered contractors currently must:
 - Annotate the application or personnel form of each covered individual to identify each vacancy for which the applicant was considered. Such annotation shall include: (i) the identification of each promotion for which the covered employee was considered, and (ii) the identification of each training program for which the covered individual was considered.

- Where an employee or applicant is rejected for employment, promotion, or training, a statement of the reason as well as a description of the accommodations considered, where applicable.
 - Where a covered applicant or employee is selected for hire, promotion, or training and the employer undertakes any accommodation that makes it possible to place the covered individual on the job, the application form or personnel record will contain a description of that accommodation.
 - Review physical and mental job qualifications upon the development of any new position, update existing positions or position descriptions and recommend and implement any necessary changes. Such review shall take place on an on-going and as-needed basis and no less than once each year upon update of the Plan.
 - When a qualified candidate is referred or selected from federal, state, or local agencies or other resources identified in the employer's Plan, formal arrangements must be made with the respective agency for the referral of the applicant, follow up and feedback on the disposition of applicant.
 - Track and monitor all personnel activity, including referrals, placements, transfers, promotions, terminations and compensation at all levels.
 - Provide training to all personnel involved in the recruitment, screening, selection, promotion, corrective action and other processes related to the employment of persons with disabilities and the commitments of the Plan.
- Impact of Individual State Benefits: There is an administrative burden on employers who have employees that work in multiple states with paid disability and family leave benefits in terms of increased communications, tracking and the potential overlap in benefits and conflicts between federal and state law. Human resource professionals must have a general understanding of the various state disability benefits and ensure their employees are informed of the process for applying for these benefits. If the employer has private disability insurance, the employees should be informed of the process if state benefits will offset the employer's disability benefits. Employers have the added responsibility of completing paperwork for both the state and private disability carrier, and coordination of a partial return-to-work requires collaboration between all stakeholders. Navigating the bureaucratic requirements can be confusing to an employee; they will look to the employer for guidance and understanding.

In addition, for state paid family leave benefits, employers must inform employees of their rights as well as the process for applying for benefits. For example, if an employer employs both a husband and wife, both may be entitled to paid benefits for the same event. In this case, the employee with

the disability would be eligible for state disability and the spouse may be eligible for paid family leave. In some cases, ongoing reports of need for paid family leave will be required from the spouse.

As employers navigate the many laws that govern the employment of people with disabilities, there is much to understand and many resources to explore. Employers who have been successful in providing early RTW programs and workplace accommodations have been able to improve their bottom line while helping their employees. Employers would benefit from increased education on successful models for RTW strategies and information-sharing with regard to resources for managing workplace accommodations.

Hiring and retaining individuals with disabilities in the workplace

Although there are fundamental elements of a successful strategy in managing disability in the workplace, there is not a simple “one size fits all” solution for every employer. Employers and HR professionals must balance pressing business objectives against common challenges associated with return-to-work strategies.

The success of the strategy will depend on the extent to which employers are able to mitigate the negative impact, while simultaneously meeting the employee’s needs. The business imperatives of the employer and the abilities of the affected employee will inform determinations regarding appropriate RTW solutions, which are considered in conjunction with the employer’s statutory obligations and protection of the individual’s rights under the FMLA, the Americans with Disabilities Act and the Americans with Disabilities Act Amendments Act, among other regulations.

However, in my experience, successful strategies for an effective disability management program can include:

- Reasonable Accommodations Committee – RACs are becoming an effective practice for ensuring that the end-to-end processes of requesting an accommodation, conducting the research required to meet individual needs, working with management and the team, and offering the accommodation is fair and equitable across the enterprise. The truly innovative companies are finding ways to utilize this RAC for those coming back from Short Term Disability (STD) and Long Term Disability (LTD) and not just new employees coming in with a disability.
- C-suite support – Whatever is going to be done from an employer’s standpoint, it will need to be supported at the highest levels of the organization because CEOs are looking at their organization’s operations and are considering two primary issues: Return on Investment/Productivity

and Mitigation of Risk. When designed and administered correctly, RTW programs meet both.

- On-site case management/RTW coordinator – This type of support provides individual assessment and intervention based on specific impairments through collaboration with the employee, supervisor, healthcare provider and insurance carriers as appropriate. It's also important for companies to have someone (or multiple people) on staff that is truly an expert in making all types of accommodations depending on the needs of the individual and, in doing so, utilizing a company's entire benefits program through an integrated approach.
- Comprehensive Wellness Programs – Employers can provide comprehensive wellness programs to support employees in maintaining or improving their health. On-site fitness and pedometer programs, weight management programs, smoking cessation programs, health screenings, health coaching and CPR training are just a few initiatives that enhance team building and overall health.
- Proactive Interventions – Early intervention to recognize and respond to an employee's needs for workplace modifications from the first day of hire through the entirety of the employee's tenure helps mitigate the impact of current and future impairments on the employee's ability to be a productive worker. Anticipating, identifying and providing accommodations to new hires such as equipment, assistive technology, interpreters, and flexible scheduling makes onboarding smooth and the employee is more-quickly engaged and productive. Being responsive to employee requests for workplace modifications based on his or her health concerns, and working together to identify reasonable solutions and confirming the effectiveness of the accommodation, can increase productivity and often avoids absence and disability through reduction of symptoms or impact of his or her impairment. Modifications may include equipment, technology, assistive devices or services, flexible scheduling, and teleworking.

As evidenced in a Mercer study and Towers Watson/National Business Group on Health study, employers can determine the value of this cost avoidance by measuring their cost of total disability as a percentage of payroll against readily available benchmark data.⁷

- Early Return-to-Work Programs – Providing supportive services (some large employers may have return-to-work coordinators or case managers) to employees throughout their absence keeps them engaged and connected with the organization and provides earlier opportunities to transition back

⁷ Towers Watson National Business Group on Health (2012). Staying at Work Report, 2011-2012; and Mercer (2010). Survey on the Total Financial Impact of Employee Illnesses, 2010.

into the workplace. Large employers and human resource professionals who engage the qualified but impaired employee and the manager in a flexible, interactive process are most successful with providing effective workplace accommodations. Of course, this process is fluid and may require additional evaluation and adjustments, and it means that employers must have the dedicated staff capable of managing the process. Bringing employees back to work in a productive capacity where it's medically possible, through provisions such as light duty work, workplace modifications, flexible work arrangements, teleworking and procurement of equipment make it less likely they will transition to long-term disability. For the employer, the ability to return trained, skilled employees to the workplace can avoid recruitment and replacement costs and reduce direct and indirect costs of absence and disability. Organizations who offer these programs have to be vigilant to comply with the relevant federal and state employment laws.

- Training – Supervisors' and employees' actions toward others with impairments can have a bearing on whether an organization is successful in supporting people with disabilities. Employees and supervisors should be trained in how to respond to employees who raise concerns about their health and workplace difficulties. They must be aware of internal resources and how to connect the employee to them. Workforce diversity training for employees enhances how employees with impairments are treated in the workplace. Training on proper body mechanics and proper use of equipment and technology associated with workplace accommodations will hasten an employee's productivity and avoid frustrations. Offering sensitivity training to employees for such things as behavior around service animals, buddy systems and support for colleagues with disabilities is helpful.
- Defining policies and jobs – Employers must ensure that their programs have specific written guidelines for transition-back-to-work programs, light duty and regular duty job descriptions, and formalized training to new tasks and processes to ensure consistency. Formal policies such as flexible workplace, teleworking and compressed workweeks provide documentation and oversight for large employers.
- Incentivizing work and employee engagement – Large employers, who continue as reasonable health and welfare benefits, as well as other programs, such as employee assistance programs and back-up care, minimize an employee's concerns. Employees may be provided voluntary continued access to employer resources (such as the intranet and communications) while on medical leave, if approved by the healthcare provider. Providing a transitional RTW pecuniary incentive allowing work to supplement disability benefits for a defined period of time protects the employee's pre-disability income while transitioning to work part-time. If the disability policy does not allow supplemental benefits during a transition back to work this will

negatively impact the willingness of the employee and the physician to engage in an early return-to-work program.

- Long Term Disability programs – Many employers offer a Long Term Disability program (LTD) that is funded through a third-party entity. LTD benefits are designed to replace an employee's earnings in the event that the employee becomes physically unable to work. Ironically, it is often more difficult to bring an employee back from a long-term disability situation than to accommodate a new employee with the same disability as the employee on LTD. This is because as mentioned previously, the interaction between the FMLA and the ADA and the interaction with the LTD policy often makes it very difficult and complicated for the employee and employer to navigate these rules and regulations to get the employee back to employment. Often, once an employee enters into a LTD situation, he or she is more likely to end up on SSDI.
- Creative accommodations: Often, it can be a simple solution such as a keyboard tray to reduce carpal tunnel symptoms that enhances the employees' ability to perform their job. Some solutions are complex, may require expert assistance and substantial and expensive changes to the worksite in order to accommodate the employee. Accommodations can include defined flexible work schedules, ergonomic workstations, voice activated computer systems, lighting adjustments, specialty equipment, technology, mobility devices or relocating the work within reach.

Accommodation challenges can occur based on the nature of the work. Organizations employing white-collar workers have more opportunity to offer light duty and workplace accommodations to employees with disabilities, as they typically have less physically demanding job functions that need to be addressed. Organizations with a workforce consisting of mostly blue-collar workers tend to have limited availability for light duty positions and a greater challenge when providing accommodations that address the employee's ability to perform physically challenging job requirements.

- Establish workplace flexibility strategy – By providing workplace flexibility policies and programs, employers can help all employees better meet their work-life needs. Workplace flexibility policies, such as flexible scheduling and telecommuting, can help employees with disabilities perform their job functions.

SHRM has engaged in a significant effort to educate HR professionals and their organizations about the importance of effective and flexible workplaces. In February 2011, SHRM formed a multi-year partnership with the Families and Work Institute (FWI). This partnership combines the research and

expertise of a widely respected think tank specializing in workplace effectiveness with the influence and reach of the world's largest association devoted to human resource management. By highlighting strategies that enable people to do their best work, the partnership promotes practical, research-based knowledge that helps employers voluntarily create effective and flexible workplaces that fit the 21st century workforce and ensure a new competitive advantage for businesses. Although FWI is an independent non-advocacy organization that does not take positions on these matters, and the position of SHRM should not be considered reflective of any position or opinion of FWI, I'd like to briefly mention one of the key elements of the SHRM/FWI partnership, the *When Work Works* program, because it seeks to educate and showcase employers who are meeting the needs of our 21st century workforce. The centerpiece of the initiative has been the Alfred P. Sloan Award for Excellence in Workplace Effectiveness and Flexibility, a nationally recognized award for organizations that are using workplace flexibility as part of their business practice.

When Work Works is a nationwide initiative to bring research on workplace effectiveness and flexibility into community and business practice. Since its inception in 2005, *When Work Works* has partnered with an ever-expanding cohort of communities from around the country to:

- 1) Share rigorous research and employer best practices on workplace effectiveness and flexibility.
- 2) Recognize exemplary employers through the Sloan Award for Excellence in Workplace Effectiveness and Flexibility.
- 3) Inspire positive change so that increasing numbers of employers understand how flexibility can benefit both business and employees, and use it as a tool to create more effective workplaces.

On occasion however, things do work out for both the employee and the organization. Consider an employee who is diagnosed with a neurologically degenerating disease such as Parkinson's disease. A marketing and sales company was able to bring this employee, who was a data analyst, back to work following a few weeks of total disability by providing a scooter and a larger monitor for visual deficits. As the employee's disease progressed and he experienced hand tremors and slurred speech, he requested that he continue to work and additional accommodations were provided to include a special keyboard and writing tools. The employee was able to successfully continue to work for 6 ½ years, before he was no longer able to perform the essential functions of the job. Had this employee worked as a backhoe operator for a construction company, the only light duty work the employer may have been able to provide was a traffic flagger, which would have required standing on the street. The employee's impairment would have precluded him from this and he would have remained on total disability.

Unfortunately, the bottom line is, the longer someone stays out of the workforce on disability benefits, the less likely the individual is to successfully re-enter the workplace or return to work at all.

Conclusion

SHRM and its members strongly support the employment of people with disabilities. SHRM members have reported mixed experiences with federal programs intended to help the disabled. From both the employee and employer perspective, navigating the SSI, SSDI, and vocational rehabilitation systems remains an immense challenge. But by implementing disability management strategies, employers across the country are reducing disability claims and improving employment outcomes for employees.

Again, I thank the Subcommittee for listening to my perspective on employer opportunities and challenges in return-to-work strategies for employees with disabilities.

I am happy to answer any questions you may have.

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