

Employee Must be Reinstated to Job

QUESTION: You advised us about workers' compensation reemployment rights when our staff veterinarian, Finn, was injured on the job. His doctor initially gave him a limited medical release and did not release him to his vet duties until yesterday. Finn's doctor apparently informed him that he was "fully cleared" to resume his vet care responsibilities with no restrictions whatsoever, and Finn reported to work.

While Finn was absent, we hired another veterinarian, Dr. Williams, to replace him. Although Finn is an exceptional veterinarian, Dr. Williams is even more accomplished and esteemed in the endangered animal field.

Dr. Williams approached us about coming to work here as soon as he heard Finn had been hurt, and enthusiastically listed the reasons why he wanted to work at our "state of the art facility."

We immediately made Dr. Williams an offer of employment, and he has been working for us since Finn has been gone. The new arrangement is working out beautifully for everyone involved. Except, of course, for Finn, who tells us now that he thinks he is entitled to have his old job back.

Naturally, this poses a huge dilemma for us.

Surely we do not have to terminate Dr. Williams in order to accommodate Finn now that he is finally released to return to work? Also, Finn still seemed a bit dazed and confused, so if we are required to give him his job back, is there anything we can do to ensure he is physically and cognitively up to it?

ANSWER: The short answer is yes, you must reinstate Finn to his former position now that he has a full medical release. You may request a fitness-for-duty certificate from Finn's physician as evidence that he is fully released to return to his former duties.

In last week's article we advised you regarding an employee's right to reemployment to an available and suitable position when the employee is not released to return to full duties due to an accepted workers' compensation injury. Now that Finn is released to resume his full duties, it is important that you understand an employee's right to reinstatement - to the exact position at the time of injury - once fully released to return to work.

Following an accepted workers' compensation injury, an employee has a legal right to be reinstated to the original time-of-injury job when the physician releases the employee for full duty with no restrictions. An attending physician's approval for the injured worker's return to the former position is prima facie evidence of the worker's ability to do the job, although the employer may require a fitness for duty certificate regarding the worker's ability to perform the duties of the position.

The “former position” of the employee means the exact same position the employee left when injured. For example, the employee is entitled to the same shift, location, duties, job title, salary and benefits. Moreover, the former position is available for the fully released, returning employee even if it is currently filled by another employee. The only exception to this is if the employee is not eligible for the former position due to seniority or other provisions of a collective bargaining agreement.

In the context of reinstatement, the former position is considered not to be “available” only when the employer has eliminated the position for reasons totally unrelated to the injured employee’s workers’ compensation absence (company restructuring, for example). When the job is no longer available due to such circumstances, the worker should be reinstated in any other existing position which is vacant and suitable. “Suitable” in this context has the same meaning as we discussed in last week’s article regarding a worker’s right to reemployment in light of a limited medical release to partial duty: a position as similar as practicable to the worker’s former position in compensation, duties, responsibilities, skills, location, shift and duration.

This right to reinstatement continues until three years from the date of injury. In addition, the employee is required to make a demand for reinstatement within seven days of receiving notification of the release to full duty.

In Finn’s case, he meets all of the criteria for reinstatement. He has:

- experienced an accepted on-the-job injury;
- been fully released to return to work;
- demanded reinstatement within seven days (in fact, he showed up at work the next day after the treating physician released him to return to work); and
- three years have not elapsed since the date of his on-the-job injury.

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