

Workers' Compensation: The Quagmire that is Reinstatement

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Pursuant to R.I.G.L. §28-33-47, which was enacted in 1992, a worker who sustains a compensable injury shall be reinstated to his job upon demand, if the position exists and is available, and the worker is not disabled from performing the duties of the position with "reasonable accommodation." A position is considered available even if it has been filled by another worker. The existence and availability of a particular position can be the subject of intense testimony and extrinsic evidence. Reinstatement is subject to provisions for seniority rights or any other employment restrictions if a valid collective bargaining agreement exists. Reimbursement rights generally expire within one year from the date of injury with exceptions that can lengthen or decrease this time-frame. No right to reinstatement exists if an employer has nine or fewer employees, if an employee is seasonal or temporary (or is on probation for less than 91 days), or if the employee was hired from a union hall.

Many workers' compensation policies exclude coverage for reinstatement; therefore, employers need to retain their own attorneys at their own expense. This is a matter that employers need to be cognizant of when they obtain or renew their coverage. Also, the RI statute gives rise to the presumption that reinstatement is automatic upon an employee's request. However, there are various strong defenses that carriers and employers must be aware of that can help deny the reinstatement petitions.

The statute requires a "certificate" from a doctor stating that the employee can return to her regular position; however, the statute is silent as to the composition of the certificate. An employer/carrier may successfully defend against such a certificate on the grounds that it is unreliable and invalid. This is especially true if the certificate is merely a one-line note. Employers and carriers should require the doctors to provide a narrative report which specifically addresses whether or not the employee can return to the same department (based on the history obtained by the doctor from the employee), without such a return being unduly injurious to the employee's health.

The Rhode Island Supreme Court has ruled that knowledge of an employee's job duties is crucial and that return-to-work-medical opinion may be disregarded if the opinion is based on a misconception of the employee's actual duties. In short, employers/carriers must question the reliability of every medical note received in support of return-to-work petitions. Or, as the Rhode Island Supreme Court stated: "[a] note from a physician does not have such talismanic effect as to be immune from rejection if the fact finder determines that it is inherently improbable in light of the totality of the evidence."

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Poisson V. Comtec Information Systems, 713 A.2d 230, 236 (R.I. 1998).

If the employee can surmount this procedural hurdle (i.e. certification), then employers/carriers can defend on the substance of the matter. The Rhode Island Appellate Division created the following standard regarding an employer's burden in order to terminate an employee who claimed the right to reinstatement: an employer must demonstrate a good faith termination of the employee. In one case, the employee called his supervisor requesting reinstatement and was informed by the supervisor that the employee was being terminated for "poor performance." The employer acted despite no investigation, pre-termination hearing, statement(s), or review of specific written policies. The decision to deny reinstatement was based solely on just a telephone call. This is insufficient.

Again, an employee's right to reinstatement is not absolute. For example, the employee may be guilty of gross misconduct; in fact, criminal activity which comes to light during the employee's period of disability may act as a bar to reinstatement. To say that the employer would be required to reinstate a "criminal employee" is just absurd and unworkable. Therefore, employers/carriers may adopt the position that an employer possesses a conditional right to terminate previously "disabled" employees if the termination is made in good faith.

If you have any questions, please contact George E. Furtado, Esquire or Earl E. Metcalf at (401) 351-9970 or gfurtado@smithbrink.com or emetcalf@smithbrink.com.

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