



Job Ready Services

October 2011 Issue

NC Worker's Comp Reform – Part 2: Willful Misrepresentation



Our Services:

- Functional Capacity Evaluations
- Work Conditioning
- Job Analyses
- Fit for Duty Testing
- Employment Testing

House Bill 709 added a new provision to the worker's comp law that bars an injured employee from receiving compensation if the employer is able to establish that the employee **"knowingly and willfully made a false representation as to his physical condition"** in his employment application or while undergoing a post-offer medical examination, AND the employer relied on that misrepresentation AND doing so was a major factor in the decision to hire the employee. In addition, the provision states the injury for which a worker's comp claim is filed must be directly connected to the employee's misrepresentation of his/her physical condition.

At the post-offer stage of employment, employers have always had the right to ask a new hire candidate anything about their physical and medical condition, as related to their ability to do their job. They have also always had the right to ask the candidate to show them how they would safely perform the essential functions of their job, under ADA and EEOC guidelines. However, the **employer is often at risk** when obtaining this information. For example, should an employee divulge a pre-

existing condition or a diagnosis that may or may not be related to their safe ability to do their job (e.g. Diabetes or HIV-positive) and then later is terminated for some other reason, they may have **grounds to sue the employer** for terminating them based on obtaining this information.

A diagnosis alone should never preclude someone from doing a job. Take for example the case of a truck driver who presented to the "company physician" to undergo a required physical prior to being placed on the job. The truck driver was a below-knee amputee and based on this fact alone, the physician made the decision that the employee was unable to do the job. The employee was never allowed to show his **ability to do the essential functions of the job safely**. He sued the employer and won.

On the other side of that argument are the cases where candidates have active signs of carpal tunnel at the time of post-offer testing for a highly repetitive job, and when sent to their physician for consent to test, the physician consents and then proceeds to tell the

employee to **"come back when you need surgery."**

While the worker's comp reform addresses an issue that has long been ignored in NC worker's comp, employers have largely always had this ability to identify "willful misrepresentation" at the post-offer stage of employment. They simply haven't been using the tools or perhaps weren't aware of them.

Functional post-offer testing is the most objective, fair and legally compliant method of determining the safe ability of persons to do the job for which they are hired. It identifies those persons who have pre-existing conditions that put them at imminent risk of injury and helps to eliminate fraud in the worker's comp system. Baseline medical information can be shared with physician post injury to provide documentation for **apportionment** should an injury occur later. Gathering baseline information reduces worker's comp costs and injuries, and having a third party obtain this information is another level of protection for the employer.



Did you know?

- North Carolina is ranked 12th in obesity in the United States
- Obesity adds 20 years to the age of a worker (i.e., a 50 year old obese person should be treated as if they are 70 years old)
- Obese workers lose 1 week more of work per year than non-obese workers

Are your wellness programs effectively addressing obesity in your workplace? Are your employees desirous of losing weight (or losing weight is medically necessary), but having difficulty sticking with a plan or making lifestyle changes? Ask Debra Lord, President of Job Ready, about “**Take Shape for Life**” (a Medifast program). She is not only a Health Coach for this weight loss program but has also lost **95 lbs** on the program. Call Debra for more information on helping your employees lose weight the safe, healthy way.



SAVE THE DATE!!

Job Ready Services' 5th Annual Seminar will be **Friday, March 9** in Cary, NC and titled “**Toolbox for Worker’s Comp Reform in NC**”

Be on the lookout for details soon and mark your calendar now!

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We're also on LinkedIn!

Be sure to follow
Job Ready Services

Upcoming Conferences/Meetings:

NCAOHN in Wrightsville Beach – Oct 26 & 27

Eastern Carolina Safety Council Workshop – November 1 (Debra Lord as speaker)

November 9 - Lunch & Learn (repeat of September L&L): “NC Worker’s Comp Reform: An Insider’s View” - George Pender, speaker. This class is full, but be sure to check out our seminar in March!

City of Durham Safety Expo – November 10

AOHP – November 11 in Kitty Hawk – Debra Lord as speaker

NC Safety & Health Council conference in Charlotte – November 17 & 18