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### **MOVING ON: OPTIONS FOR THE PERMANENTLY DISABLED**

By Attorney Gary J. Levine

The Rhode Island workers' compensation system is designed to provide injured workers with all appropriate medical treatment so they can recover from their injuries and return to their regular jobs. Unfortunately, not all injured workers fare so well. Some injuries are so serious that they result in a permanent disability that does not allow for a return to regular work.

For those who remain permanently disabled, a work injury deals a serious setback to their future and their families. It can be devastating news for injured workers to learn that they are permanently disabled from returning to their regular jobs, particularly when they had good jobs with good pay and with a company where they planned to continue working for many years. But there is hope. There are options that will help permanently disabled injured workers rebuild their lives.

None of these options are preferable to making a full recovery and returning to regular work. They won't make the physical pain of an injury go away. But the reality is that workers' compensation benefits typically don't last forever. The following options will help to ease the financial pain of being out of work and help injured workers get their lives back on track.

## **OPTION 1: FIND A NEW JOB**

Some injured workers are permanently and totally disabled. But most injured workers who are permanently disabled still have the ability to do some type of work. A doctor may restrict an injured worker from performing certain types of physical activity that prevent a return to his/her regular job, but allow the injured worker to do light duty work. For example, a doctor may say not to lift more than 20 pounds or not do any repetitive work or work above shoulder level, etc. A doctor's work restrictions set forth what an injured worker can't do but leave open all other types of physical activity that the injured worker can do.

One option for those injured workers who are permanently partially disabled is to find a new job that fits within the limitations set by their doctor. The job may be available from the same employer or it may require looking for a job with a new employer. Starting a new job does not close the workers' compensation case. The insurance company remains responsible to cover medical treatment for the injury. Also, in general, weekly workers' compensation benefits will continue after starting a new job if it pays less than what the injured worker was earning before the injury. The amount of compensation payable each week is roughly 75% of the difference between the injured workers' net pay before the injury (not including overtime) and the net pay from the new job. Benefits will continue until the injured worker has received benefits for partial disability for a total of six years. After that, the insurance company will remain responsible for medical treatment only.

## **OPTION 2: VOCATIONAL REHABILITATION**

For many injured workers, going out and finding a new job on their own is not an easy answer or an acceptable solution to their problems. Some may have tried to find work on their own with no success. Some may not know what other kinds of work to look for. Some may feel like no employer would even hire them. Some injured workers may have only done heavy unskilled work and don't have the necessary skills to be able to get a new job within their physical restrictions. Some may have had high paying jobs that are not easily replaced without obtaining new skills. For those injured workers who are in this predicament, one option is to take advantage of vocational rehabilitation.

All injured workers with a permanent disability are entitled to vocational rehabilitation from the Donley Center or through a private vocational rehabilitation counselor. Vocational rehabilitation can take many forms depending on the needs of each individual injured worker. It can involve a range of services including assistance in identifying occupations that fit within the injured worker's physical limitations and qualifications, assistance with resume development and interviewing skills, taking computer classes, and providing job leads. Vocational rehabilitation can also include formal retraining and schooling if it is determined that it is necessary to allow an injured worker to gain new skills to obtain suitable employment. The injured worker works with the vocational rehabilitation counselor to identify jobs and retraining programs that are best suited to his/her background and abilities.

The cost of vocational rehabilitation and any recommended retraining program is paid by the insurance company. Weekly benefits continue to be paid while an injured worker is participating in a vocational rehabilitation program.

### **OPTION 3: ESTABLISH TOTAL DISABILITY STATUS**

Sometimes, injured workers with a permanent partial disability are just not able to find work. There are some injured workers who are physically able to work but are unemployable due to their background combined with the physical limitations of their injury. They may not have a high school education, may have only done heavy and unskilled work, and may not be able to read, write or speak effectively in English. Rhode Island law recognizes that there is a difference between being able to do a job and being able to get a job. When an injured worker is unemployable because of the physical limitations of the work injury combined with their background, they may qualify for total disability benefits under the “odd lot” statute. This would allow weekly benefits to continue for life with annual cost of living adjustments.

### **OPTION 4: SETTLE**

Settling a workers’ compensation case may be an option that is in the best interest of some injured workers. A settlement is a payment by the insurance company to an injured worker in exchange for the injured worker giving up the right to all future workers’ compensation benefits, including weekly payments and medical benefits. A case will settle only if the injured worker and the insurance company can agree on an amount. Neither the injured worker nor the insurance company can force the other to settle. The amount of settlement is entirely negotiable.

Settlement may be an option for injured workers who are confident in their ability to get a job so that they don't need the safety net of workers' compensation to pay their bills. It may be an option for those who need start up money for a new business. It may also be an option for an injured worker who is at retirement age or would simply prefer a lump sum payment rather than continuing weekly payments. Settlement closes the case forever; it can not be reopened even if the injury gets worse and requires further medical treatment. Therefore, the decision to settle requires careful consideration.

### **OPTION 5: DO NOTHING**

This option is included to recognize that doing nothing is a choice. An injured worker with a permanent disability may choose to not look for work and not participate in vocational rehabilitation and not settle. The consequence of doing nothing is that the weekly benefit will probably be reduced by 30% based on a law that allows such a reduction when an injured worker reaches maximum medical improvement and cannot demonstrate a good faith effort to find a new job. Also, weekly benefits will end after payments for partial disability have been paid for six years.

### **CONCLUSION**

All of the above options are available to assist injured workers in rebuilding their lives. Any of them can be exercised at any time. For example, an injured worker may start to look for work independently and then decide to get vocational rehabilitation. An injured worker in vocational rehabilitation may later decide to settle the case. Injured workers can take advantage of these options to help themselves get back on their feet and recover financially as well as medically from a work injury.

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