HIRING, RETURN TO WORK AND TERMINATION

Managing the relationship of employer and employee

Presented by

James E.R. Ratledge

WILSONRATLEDGE

4600 Marriott Drive Ste. 400
Raleigh, NC 27612
Office (919) 787-7711
Fax (919) 787-7710
www.wrlaw.com

HIRING, RETURN TO WORK AND TERMINATION

The employment relationship between the employee and employer is one of mutual reliance. The employer is relying on the employee to perform a position, and in doing so, advance the business of employer. Conversely, the employee is relying on the employer to provide a livelihood, and in many cases, a career. Managing this relationship is vital to both the employer and the employee and requires communication, investigation and anticipation.

I. HIRING – MAKE ME AN OMELET

"When I'm hiring a cook for one of my restaurants, and I want to see what they can do, I usually ask them to make me an omelet."

- **Bobby Flay,** Chef / Restaurateur

In North Carolina, injured employees, through the Workers' Compensation Act, are entitled to receive medical treatment and wage replacement after suffering an at-work injury or occupational disease. Every employer with three or more employees is required to provide the coverage. The technical definition of an employee is located at N.C. Gen. Stat. § 97-2(2), but basically covers any W2 employee. The Workers' Compensation Act places no duty on an employer to accommodate any restrictions or limitations; provide leave over and above what might be allowed to any other employee; or hold the injured worker's job open until he or she can return to work. However, injured employees entitled to workers' compensation benefits receive those benefits until they return to work, settle their claim or there is some other order of the Commission.

The Worker's Compensation Act places no requirements on the hiring of employees, but the anticipation of a possible accident places great responsibility on both the employee and the employer at the time of hiring. Both the employee and the employer need a clear understanding of the employment duties to be performed by the employee and any misrepresentation by the employee as to his or her ability to perform the job can have serious consequences if an accident ensues. In essence, it is somewhat of a shifting burden at the time the employment contract is created. First the burden is on the employer to outline the duties of the job and to investigate the employee's ability to perform those duties. Second, the burden is on the employee to be honest about their ability to reasonably perform the outlined job duties in order to preserve their right to benefits, should there be an accident. The failure of the parties to fulfill these responsibilities can have grave consequences after an accident.

Since the Workers' Compensation Reform Act of June 24, 2011, North Carolina has recognized what is commonly referred to as the "misrepresentation defense" for employers.

N.C. Gen. Stat. § 97-12.1 Willful misrepresentation in applying for employment.

No compensation shall be allowed under this Article for injury by accident or occupational disease if the employer proves that (i) at the time of hire or in the course of entering into employment, (ii) at the time of receiving notice of the removal of conditions from a conditional offer of employment, or (iii) during the course of a post-offer medical examination:

1. The employee knowingly and willfully made a false representation as to the employee's physical condition;
2. The employer relied upon one or more false representations by the employee, and the reliance was a substantial factor in the employer's decision to hire the employee; and
3. There was a causal connection between false representation by the employee and the injury or occupational disease.

For the employee to be barred from receiving benefits, the employer must show the misrepresentation occurred (1) at the time of hire; (2) at the time of receiving notice of the removal of conditions from a conditional offer of employment; or (3) during the course of a post-offer medical examination. It is also important to note that other employment issues and considerations may come into play, such as the Americans with Disabilities Act, which can also affect the hiring process.

The "misrepresentation defense" has been the subject of much discussion and I am informed by mediators and Deputy Commissioners that it is often an element at mediations and hearings. However, it appears from the case law that it is a practice more honored in the breach then the observance. Because the misrepresentation defense is "an affirmative defense" it is the employer's responsibility to plead the defense and prove by the greater weight of the evidence that the misrepresentation occurred and that it is causally related to the subsequent accident.

Best Practice Recommendation- Make an Omelet

I represent employers – it is what I do. But, the best practice recommendation protects both employers and employees. By having the employee document they can make an omelet, the employer and the employee preserve their rights if the employee is subsequently injured in a cooking accident.

The best practice strategy to preserve the right to later assert the misrepresentation defense is to implement, at the minimum, a post-offer, pre-hire questionnaire to gather the necessary information about the applicant worker and their ability to perform the essential function of the position being offered. Better yet would be the implementation of a pre-hire physical. Both of these require the employer to focus ahead of time on its hiring needs and outline the nature of the position to be filled and its essential functions, requirements and responsibilities. This is best achieved by a detailed job description outlining the essential functions, requirements and responsibilities of the position. With the job description in hand, the employer can focus on determining whether the prospective employee is a match for the position by giving the prospective employee an opportunity to document that he or she is physically capable of performing the job. An employer

who relies upon the prospective employee's documented representations should be protected if it later needs to assert the defense. Accordingly, best practices dictate that the employer proceed as follows:

(1) Prepare accurate Job Descriptions detailing with specificity the essential functions and physical demands of their positions.

This provides the employee with detailed information about the offered position and documents the communications between employee and employer. At the appropriate time, the employer should have the prospective employee sign off on the job description, thus confirming the employee's understanding of the requirements and functions of the position, as well as the employee's affirmative representation that the employee is physically capable of performing the essential functions of the job, with or without reasonable accommodation.

(2) Implement Post-Offer, Pre-Hire Questionnaires.

In doing so the employer may inquire into areas such as prior work injuries, medication usage, work restrictions, surgeries, and permanent disability ratings. The questionnaire is utilized after a conditional offer of employment has been extended. Employer and employee should be cognizant of the fact that the successful completion of the Post-Offer, Pre-Hire Questionnaire is a condition precedent to the employment offer being finalized.

(3) Implement Post-offer, Pre-Hire Physicals to determine the employee's fitness for duty.

Much like with the Post-Offer, Pre-Hire Questionnaire, the time to implement this procedure is after a conditional offer of employment has been extended. Again, employer and employee should be cognizant of the fact that successful completion of the Post-Offer, Pre-Hire Physical is a condition precedent to employment being finalized.

It should be noted that the above steps are only the groundwork to document and preserve an employer's ability to later assert the misrepresentation defense. The actual defense will only be available to the employer if there is a causal connection between any false representations made by the employee at the time of hire and the subsequent at-work injury or resulting disability. Since it is an affirmative defense the employer must prove by the greater weight of the evidence that the misrepresented or undisclosed physical condition increased the employee's risk for injury and that the employer relied upon the misrepresentation. It also should be noted that the misrepresentation and the subsequent injury must involve the same body part. *Purcell v. Friday Staffing*, 235 N.C. App. 342, 761 S.E.2d 694 (2014), one of the earliest cases to tackle the misrepresentation defense, continues to provide the best insight into its application. The case outlines the responsibilities of the employer and the employee and what the Court will be looking for when it has to decide the issue.

In *Purcell*, the allegedly injured Plaintiff had suffered a prior work-related back injury in 1999 while working for a previous employer. This injury resulted in a back surgery, a permanent partial disability rating, and permanent work restrictions of no lifting greater than 20 pounds. She also was encouraged by her treating physician to find sedentary work.

Following settlement of her workers' compensation claim, Plaintiff worked for subsequent employers and continued to receive medical treatment, including physical therapy, a TENS unit, and a repeat lumbar MRI examination, revealing a disc bulge at L4-5. In 2010, Plaintiff applied for employment through Purcell, a staffing company. During the employment application process, Plaintiff completed an Essential Functions Questionnaire, a Medical History Questionnaire and participated in an interview. During the application process Plaintiff represented she could lift and carry more than 50 lbs.; frequently bend, pull, push, kneel, squat, and twist; stand for long periods of time; and sit for long periods of time. Plaintiff also misrepresented that she had never: (1) filed a workers' compensation claim; (2) suffered an injury; (3) undergone surgery; or (4) received treatment for back pain or injury.

Plaintiff was hired and placed on an assembly line at one of Purcell's clients in a position that required occasional walking and stooping; frequent overhead reaching; pushing 40 to 45 lb. baskets of automotive parts; lifting automotive parts from baskets to assembly line; carrying boxes of automotive parts from a staging area to a table; and constantly lift trailer parts weighing 20 to 25 lbs., all of which was outside Plaintiff's restrictions assigned from her prior workers' compensation claim. In 2011, Plaintiff alleged she injured her neck and back by constantly twisting and bending to pick up trailer parts while working on the assembly line. Defendants denied liability for Plaintiff's claim.

The Commission upheld Defendants' denial of the compensability of Plaintiff's claim pursuant to N.C.G.S. § 97-12.1 or the "Misrepresentation Defense" concluding that: "(1) Plaintiff knowingly and willfully made a false representation as to her physical condition; (2) Employer relied upon said false representation by Plaintiff, and the reliance was a substantial factor in Employer's decision to hire her; and (3) there was a causal connection between the false representations by Plaintiff and her claimed injury."

Plaintiff appealed the decision to the Court of Appeals contending that the Commission erred in finding Defendants had proven the third element, the requisite causal connection. She did not challenge the Industrial Commission's conclusion that Defendants had proven the first and second elements.

The Court utilized the "Larson Test," which requires that "[t]here must have been a causal connection between the false representation and the injury." To satisfy the "causal connection" element of N.C.G.S. § 97-12.1, the Court outlined that Defendants must prove by the preponderance of the evidence that Plaintiff's "undisclosed or misrepresented injury, condition, or occupational disease increased the risk of the subsequent injury or disease." The Court went on to hold that the Industrial Commission had not erred in denying Plaintiff's claim based on N.C.G.S. § 97-12.1, as the evidence revealed Plaintiff was exceeding her work restrictions when she injured her back. Specifically, the Court noted that Defendants had provided expert medical testimony that Plaintiff was at an "increased risk of injury" if she exceeded her restrictions, thus satisfying the "causal connection" requirement set forth in N.C.G.S. § 97-12.1.

The *Purcell* case explicitly outlines the responsibilities of the employer and the employee at the time of entering into a contract of employment in anticipation of an accident. It provides a

good example of an employer documenting the essential functions of a position offered to a potential employee and an investigation by the employer into the potential employee's ability to reasonably perform those job duties. Similarly, it outlines what can transpire when an employee fails to voice any limitations the employee might have in performing the outlined job duties.

II. RETURN TO WORK - COME BACK AND MAKE MORE OMELETS (WITH OR WITHOUT A SOUS CHEF)

The pre-mmi and post-mmi return to work

After an injury, the employee's return to "suitable employment" should be the goal of every employee and employer. However this does not always occur.

N.C. Gen. Stat. § 97-32. Refusal of injured employee to accept suitable employment as suspending compensation.

> If an injured employee refuses suitable employment as defined by G.S. 97‑2(22), the employee shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the Industrial Commission such refusal was justified. Any order issued by the Commission suspending compensation pursuant to G.S. 97‑18.1 on the ground of an unjustified refusal of an offer of suitable employment shall specify what actions the employee should take to end the suspension and reinstate the compensation. Nothing in this Article prohibits an employer from contacting the employee directly about returning to suitable employment with contemporaneous notice to the employee's counsel, if any. (1929, c. 120, s. 32; 2011.)

Over the years I have noticed that employers sometimes have difficulty grasping the concept of "suitable employment." I am often asked why the employer must meet such stringent requirements with regard to post-accident employment when the employer could have hired an employee to do anything the employer wanted, including sitting in a room with the "unique opportunity" to sit and twiddle their thumbs. Accordingly, I often have to remind my clients about the case of *Peoples v. Cone Mills Corp.,* 316 N.C. 426, 342 S.E.2d 798 (1986).

Peoples involved a severely disabled plaintiff who was offered a "unique opportunity" to return to employment. The supply room job that the employer offered to the plaintiff did not require the plaintiff to "lift any object"; it did not require the plaintiff to "engage in any physical activity of which he did not feel capable"; and it was part-time, allowing the plaintiff to work "only the number of hours he desires and the plaintiff was not required to work if he did not feel like doing so." The evidence tended to show that the supply room job was "engineered and designed specifically for an individual." Therefore, the *Peoples* Court concluded that "Cone has so modified the supply room position . . . that the position would not be offered in the competitive job market."

> "The Workers' Compensation Act does not permit Cone to avoid its duty to pay compensation by offering an injured employee employment which the employee under

> normally prevailing market conditions could find nowhere else and which Cone could terminate at will, or as noted above, for reasons beyond its control."

As a result of the Workers' Compensation Reform Act of 2011, "suitable employment" is now defined by N.C. Gen. Stat. § 97-2(22), whereas it was previously defined by the North Carolina Rehabilitation Rules spiced with often confusing case law. Specifically, N.C. Gen. Stat. § 97-2(22) provides,

> Suitable employment. – The term "suitable employment" means employment offered to the employee or, if prohibited by the Immigration and Nationality Act, 8 U.S.C. § 1324a, employment available to the employee that (i) prior to reaching maximum medical improvement is within the employee's work restrictions, including rehabilitative or other noncompetitive employment with the employer of injury approved by the employee's authorized health care provider or (ii) after reaching maximum medical improvement is employment that the employee is capable of performing considering the employee's preexisting and injury-related physical and mental limitations, vocational skills, education, and experience and is located within a 50-mile radius of the employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate since the date of injury. No one factor shall be considered exclusively in determining suitable employment.

The "suitable employment" statute outlines two distinct categories of suitable employment - one for pre-maximum medical improvement ("MMI") claims and one for post-MMI workers' compensation claims.

For pre-MMI employment to be suitable for claims arising on or after June 24, 2011, the employment must be:

1. With the employer of injury;
2. Within the light-duty work restrictions - which means it can be modified and it can be "make work" or non-competitive employment; and
3. Approved by the authorized treating physician.

For post-MMI suitable employment, there is a multifactorial analysis, and no one factor is exclusively controlling. The factors the Industrial Commission considers are:

1. The claimant's pre-existing conditions;
2. The claimant's work restrictions;
3. The claimant's vocational skills, education and experience.

There is also a geographical component that the Industrial Commission must consider. The offered position must be located within a 50 mile radius of the

employee's residence at the time of the injury or current residence if the employee had a legitimate reason to move. Recently, the North Carolina Court of Appeals interpreted the 50 mile radius element of the statute to be a requirement and not merely a factor to be considered. *Falin v. The Roberts Company Field Services, Inc*., __ N.C. App. __, 782 S.E.2d 75 (2016). The Supreme Court refused to review the decision.

Please note that the introductory paragraph reads that the employment must actually be offered to the employee, so there needs to be an actual job offer rather than just a labor market survey. This becomes problematic when suitable employment would have been available, had an employee not been terminated for other reasons. If the employee is an undocumented worker and offering employment is not an option, then it may be acceptable for the employer to simply show that employment is available, presumably through a labor market survey, but for the employee's status as an undocumented worker.

Routinely I am asked about appropriate pre-MMI modified or transitional employment. Of course, the modified duty available depends on the business of the employer. However, over the years I have found the following suggestion to be useful to employers in determining what modified duty to offer:

1. Answering the telephone
2. Filing paperwork
3. Taking inventory (but not physically moving inventory)
4. Tool room/storage checkout
5. Placing purchase orders by phone, fax, e-mail, etc.
6. Shredding documents
7. Customer appreciation phone calls, telephone sales calls, dispatch assistant
8. Greeter/receptionist/front desk assistant
9. Computer data entry work or computer training
10. Collating printed materials
11. Packaging/light assembly of product or merchandise
12. Outgoing mail stuffing, applying postage
13. Incoming mail opening, mail bin distribution
14. Making photocopies
15. Light stocking of supplies for bathrooms/kitchen areas
16. Perform safety inspections and/or ensure employees are wearing the appropriate safety equipment
17. Teacher/instructor (many times injured experienced employees may be able to return to work teaching less experienced employees)
18. Light food preparation that can be performed sitting down
19. Light surface cleaning, counters, phones, and computers etc.

I also recommend that the employer schedule a meeting of supervisors and employees to suggest alternate duty jobs. Encourage everyone to come up with as many suggestions as possible, even if initially the idea may be unrealistic. The way to come up with good ideas is to have a lot

of possible ideas. Be creative and look at what meaningful work/job tasks need to be done in your workplace and if any assistance is needed with those tasks.

I am often asked how the offered position should be communicated to the injured employee. I like to have it documented in case I subsequently need evidence for a Form 24 Application or hearing. In this regard I have attached to this paper a letter format that my clients use and which I recommend be sent by certified mail.

Vocational Rehabilitation

Pursuant to the Workers Compensation Reform Act of 2011, if the injured employee has not returned to work or has returned to work earning less than 75% of the preinjury wage, the injured employee may request vocational rehabilitation. It is important to note that the 75% wage threshold for vocational rehabilitation does not necessarily indicate that the offered employment is unsuitable, as the employee has the right to receive TPD. Vocational rehabilitation may include requests for education and retraining in the North Carolina community college or university system. However, the education or retraining must be reasonably likely to substantially increase the injured employee's post-education wages. Vocational rehabilitation may also commence before the injured employee reaches MMI.

If vocational rehabilitation is determined to be necessary, the employer has the right to make the initial selection, but at any time either party may request a change in the rehabilitation counselor for good cause. Accordingly, the parties have a responsibility to ensure that vocational rehabilitation compliance occurs and the employer has the right to seek compliance by obtaining an order from the Industrial Commission and/or subsequently filing a Form 24 Application to Suspend Benefits if compliance still does not occur.

III. TERMINATION - NO ONE CAN EAT YOUR OMELET

In general, private-sector employment in North Carolina is "at will." This means that an employer is free to terminate an employee for any reason or no reason at all. There are exceptions to the at-will rule. The most common exceptions include:

1. An employment contract that sets out the terms and conditions of employment and limits an employer's ability to fire the employee at will.

2. A termination that violates federal and state employment statutes prohibiting discrimination or retaliation. Age, disability or injury rating, Sex (including sexual harassment), Pregnancy, Ethnicity or national origin, Race or skin color, Genetic information, Religion.

3. A termination that violates a particular public policy.

With regard to public policy, there are limited cases when a termination is unlawful, even if the employee is not protected by a contract or a federal or state statute. There is no specific list of the kinds of discharges that violate public policy, but an example would be firing someone for refusing to lie under oath.

The North Carolina Retaliatory Discharge Act (REDA) prevents a North Carolina employer from firing, suspending, demoting or relocating for retaliatory reasons an employee for, among other things, filing a workers' compensation claim. REDA does not prevent an employer from firing an employee because they cannot do the work.

Accordingly, an employer can terminate an employee at will. A more precarious situation exists when an injured or recuperating employee returns to work for the employer and engages in activities for which that employee should be terminated. The seminal case dealing with this issue is *Seagraves v. Austin Co. of Greensboro*, 123 N.C. App. 228, 472 S.E.2d 397 (1996). Therein, the Court of Appeals addressed the issue of an injured worker constructively refusing suitable employment by her actions after returning to work. Ultimately, the Court held that, where an injured worker returns to suitable employment and is subsequently terminated for cause, the injured worker may have constructively refused suitable employment and is not entitled to a resumption of indemnity benefits. The rationale is that the employer upheld its end of the bargain by returning the injured employee to a position that accommodated any disability resulting from the compensable injury. Once the employee's own misconduct results in a loss of that employment opportunity, the employee should not be entitled to disability benefits.

In *Seagraves*, the Court established some rules that can assist employers in determining whether an injured employee's benefits may be suspended after he or she is terminated from employment. In order to prove constructive refusal of suitable employment, the employer must essentially prove three things:

(1) that the employee was terminated for misconduct;

(2) that the same misconduct would have resulted in the termination of a non-disabled employee; and

(3) that the termination was unrelated to the injured worker's compensable injury.

It should be noted that terminating the employee's benefits does not end the employer's responsibility to the injured employee for TTD or TPD. If the injured employee can prove that they have made a valid and reasonable effort to find alternative suitable employment subsequent to their termination, but have been unsuccessful due to limitations or restrictions flowing from the compensable at work accident, the employer may have to reinstate benefits. *McRae v. Toastmaster*, 358 N.C. 488, 597 S.E.2d 695 (2004).

Normally it is not too difficult for an employer to establish the first element of the *Seagraves* test – that an injured worker was terminated for misconduct. In fact, there are numerous workers' compensation cases where an injured worker was terminated for misconduct or violated

clear company policies. This includes such things as failing drug tests, safety violations, stealing from the company, poor job performance, or other misbehavior such as "mooning" a co-worker. The best way to establish that an injured worker was terminated for misconduct is establish the violation of a company policy or handbook. Written documentation of the policy certainly helps and written documentation of the injured employee's infraction further establishes the element. Moreover, the employer's ability to establish a pattern of infractions and/or counseling further establishes the element. For example, if an employer can show that an injured worker received written warnings for each indiscretion, then it is typically easy to prove that the injured worker was terminated for misconduct.

As to the second element of the *Seagraves* test, employers should not have difficulty proving that the same misconduct would have resulted in the termination of a non-disabled employee. Again, written documentation such as a company policy or handbook would establish that all employees, whether disabled or not, would be subject to termination for the same misconduct. Also, evidence that other non-disabled employees had been fired for the same offense would also help establish the element.

Generally, it can be difficult for the employer to establish that the termination was unrelated to the injured worker's compensable injury. As everyone in the field knows, a workers' compensation claim tends to overshadow and color everything that occurs after the accident. It is not uncommon to hear at mediation or hearings, statements from the injured employee that they were never treated the same after the at-work accident or statements from the employer that the employee never acted the same after the at-work accident. Accordingly, the most effective way for the employer to deal with the issue is to prove through expert medical evidence that the injured employee could have performed the duties of the position. The best way to show this is by having the injured worker's physician approve the job duties prior to the injured worker returning to work.

In the discussion of hiring in anticipation of an accident, it was pointed out that great responsibility rests upon the employer to (1) outline the position being offered and its essential functions and (2) inquire about the employee's ability to perform the position. Responsibility also rests on the employee to voice any limitations the employee might have in performing the essential functions of the position. The same holds true for termination of a recuperating employee. Responsibility rests upon an employer to prove that the recuperating employee is being treated the same as any other employee in the company and responsibility rests upon the employee to ensure that the employer is aware of any limitations the employee may have during the period of recuperation. Following are two Industrial Commission cases outlining the parties' responsibilities.

In *Thomas v. CenturyLink*, IC No. X58430 (filed September 9, 2013), the employee suffered an at-work injury but later returned to work for the employer. Approximately one year after the accident, the employee was terminated for failing to follow his assigned work schedule. The employee filed for workers' compensation benefits, alleging that his failure to follow the work schedule was due to his closed head injury. The employer provided the Commission with documentation of ongoing and progressive counseling and discipline of employee regarding his failure to adhere to the assigned work schedule. Conversely, there was no evidence that the employee had ever informed the employer that his difficulty in following the schedule was related to a head injury or medication. The Commission upheld the employer's denial of benefits finding

that the employee was terminated for reasons any non-injured employee would have been terminated.

In *Braswell v. Case Farms, Inc.*, IC No. Y09998 (filed December 15, 2016), employee sustained a compensable work injury to her hand which required her to take certain medications prescribed by the treating physician. One of those medications came with a warning to stay away from heated areas while taking the medication. Prior to reaching MMI, employee returned to work for her employer in her pre-injury job, but complained that her job was too difficult for her to perform given the persistent pain in her hand. As a result, the employer moved employee to another job within an area of the plant known as the kiln. Employee tried explaining to her manager that she was not supposed to be working in heated areas while taking the medication for her hand injury. Notwithstanding her explanations, she was kept in the kiln area where it reportedly got to 100°. After working for roughly 2 hours she felt as though her head was "going to explode" and became sick to her stomach, so she left the kiln and went to the company nurse. Employee informed the nurse that she could no longer work in the kiln area because it was making her sick. One of the managers who attended that meeting with the nurse told employee to go back into the kiln. Instead, employee turned in her ID card and left for the day.

The next day, employee called in to work and reported that she would not be coming in because she was still experiencing headaches, chest pain, and difficulty with breathing. In response, her employer informed employee that she no longer had a job. Employee later found employment elsewhere and sought TTD benefits for the time she was out of work. The employer denied the claim on the grounds that employee had voluntarily quit her job without any sufficient medical justification. The Full Commission ruled that employee had not been treated like any other employee but rather, that she was not able to perform her assigned job duties with the employer due to her work related injury and resulting medical treatment and that employee was terminated from her pre-injury position due to conditions related to her compensable injury.

These two Industrial Commission cases outline the necessity of the employee and the employer to document the parties' respective responsibilities to each other. They further document the parties' responsibility to communicate with one another regarding any difficulty either party might be experiencing during the pre-MMI return to work process. If the employer observes an employee's failure to perform the essential function of position filled by the employee, the employer should document and communicate such failure as it would with a non-injured employee. Likewise, the injured employee should communicate any difficulty the employee was experiencing in performing the pre-MMI position due to the injury.

Date

Mr. / Ms. Claimant Name

Claimant address

Dear Mr. / Ms. Claimant:

Dr. XXXXXX has given you a release to perform modified duty commencing *August 11, 20XX*. We are pleased to offer you employment consistent with the physical limitations of your release. The modified duty employment will consist of (insert brief description of employment). Please be assured that we will only assign tasks to you that are consistent with your current medical restrictions.

Please report to your (insert supervisor or return to work coordinator) on (insert date and time) to begin the modified duty employment. Your work schedule will be (insert hours).You will be paid (your normal wages/or/whatever the job pays).

Our goal is to assist you in the recuperative process by providing you with modified duty employment until you can return to full duty employment. You may direct any questions to (insert "return to work" coordinator or Human Resource Manager) at (insert telephone number).

If you accept this modified duty employment, please indicate by signing and dating below and returning the letter. If we do not hear from you we will assume that you have rejected modified duty employment offer.

Sincerely, (name of person sending job offer)

_____ _____

Mr. / Ms. Claimant Name Date