The Role of Disability Management Programs in ADA Compliance

This brochure is one of a series on human resources practices and workplace accommodations for persons with disabilities edited by Susanne M. Bruyère, Ph.D., CRC, SPHR, Director, Program on Employment and Disability, School of Industrial and Labor Relations – Extension Division, Cornell University. It has been developed for Cornell University by Bruce G. Flynn, Consultant, Watson Wyatt Worldwide.

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The full text of this brochure, and others in this series, can be found at: www.ilr.cornell.edu/ped/ada. Research reports relating to employment practices and policies on disability civil rights legislation, are available at: www.ilr.cornell.edu/ped/surveyresults.html.

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More information is also available from the ADA Technical Assistance Program and Regional Disability and Business Technical Assistance Centers, (800) 949-4232 (voice/TTY), www.adata.org.

What is disability management?

When employees leave work as the result of a disabling injury or illness, it is not simply a matter of adding up the medical bills and income replacement costs to determine the impact of disability on the workplace – knowledge and experience are lost, workplace efficiency decreases, customer relationships suffer, and productivity declines. In fact, the Census Bureau estimates that the total medical, income replacement, and productivity-related costs of disability will top $340 billion in the year 2000[1], a fact many companies have begun to take very seriously. In times of tight labor markets, no employer can afford to lose even one valued employee due to poorly managed health or disability.

The field of disability management (DM), which was born of employer efforts to control disability costs beginning in the mid-1980's, has undergone unprecedented change and growth since then due at least in part to the passage of the Americans with Disabilities Act (ADA) in 1990. "Disability management is a workplace prevention and remediation strategy that seeks to prevent disability from occurring or, lacking that, to intervene early following the onset of a disability, using coordinated, cost-conscious, quality case management and rehabilitation services that reflect an organizational commitment to continued employment of those experiencing functional work limitations."[2] This definition, which first appeared in a 1992 text on disability management, is still applicable today although the scope of services and interventions that can help to manage and minimize the impact of disabling injuries and illness on the individual and on the organization has expanded exponentially.

The concept of DM is a simple one – connect all the individual care, benefit, and case management components so they complement each other. In its simplest form, integrated disability management coordinates occupational and non-occupational

[1] Friend, D. (2000). HealthCare.com. Bethesda, MD: Watson Wyatt Worldwide, p. 71
[2] Akabas, S., Gates, L., and Galvin, D. (1992). Disability Management. New York: AMACOM, p.2.

disability benefits and absence and paid leave programs with a focus on early return to work. Increasingly, DM programs also coordinate health care, employee assistance (EAP) and behavioral health care, health promotion, disease management, and medical case management services all aimed at improving overall workforce health, easing the administrative burden, and providing a seamless set of benefits for workers with disabling injuries and illnesses.

Integration of DM program functions becomes complex, however, given the scope of programs, policies, and practices to be integrated: data management from multiple internal and external sources; education of health care providers; management of multiple vendors for case management, insurance (or self-insured administration), health care, and rehabilitation services; and, last but not least, training front-line supervisors in the intricacies of managing return to work. Every organization's situation is different and no single integration model will work well for every company. But all organizations must be mindful of the reasonable accommodation requirements of the ADA in designing and implementing return-to-work policies and programs for their employees with disabilities.

How have DM programs grown and developed?

Disability management programs have been utilized increasingly over the past decade by businesses seeking to control the cost of workplace disability. The Washington Business Group on Health, in collaboration with human resources consulting firm, Watson Wyatt Worldwide, has surveyed large employers since 1996 regarding their DM program activities and concerns. The most recent survey results indicate that 43% of large corporations have implemented some form of integrated DM program, up from 23% in 1996.[3] As the number of programs has increased, so too have corporate expectations of DM program efforts. In 1996, most companies responding to the "Staying @ Work" survey indicated that increased frequency of return-to-work outcomes and reduced benefit costs were the primary measures of program success. However, by 1999, businesses reported that improved customer satisfaction, reduced absenteeism, and increased productivity were also being tracked to determine if DM program efforts had a positive impact on overall business success.

This bottom line orientation to measuring DM program effectiveness encompassed ADA compliance once the Title I provisions were implemented in 1992 as many corporations recognized the importance of reasonable accommodation as the key to early return to work as well as reduced liability for discrimination. One large financial institution reorganized its human resources departments in 1993 so that ADA compliance efforts, previously a part of its equal employment opportunity program, became the responsibility of the disability management department, which also coordinated occupational and non-occupational return-to-work efforts.[4] Many large companies have recognized that the reasonable accommodation process mandated by the ADA requires essentially the same analysis of work limitations and modified work options as typical transitional return-to-work programs[5]. Thus, its DM program is ideally positioned to address both temporary and permanent work return issues.

In addition to addressing return to work following injuries or illnesses, DM programs have also begun to collaborate with corporate health promotion and disease management efforts in order to reduce the incidence of preventable health conditions and intervene early with chronic illnesses and to teach self management skills and reduce acute episodes requiring additional time off work. As the workforce ages, the incidence of disability among the employed population is expected to rise thereby challenging employers to maintain maximum workplace flexibility and to accommodate the needs of older workers by providing, for example, assistive technology, flexible schedules, and telecommuting options.

[3] Staying @ Work:Increasing Shareholder Value through Integrated Disability Management. (1999). Bethesda, MD: Watson Wyatt Worldwide, p. 2.

[4] BNA Workers' Compensation Report. (1996). Bank addresses ADA accommodations, comp return to work in same program. Vol. 7, 1051, p. 37.

[5] BNA, p.37.

Employee assistance programs (EAP) have also begun to partner with DM programs to identify employees with mental health problems who can benefit from reasonable accommodation of work limitations associated with these types of disorders. Mental health disorders are typically considered by employers to be the most difficult types of disabilities to accommodate. Recent research indicates that structuring benefit plans to provide more generous behavioral health coverage often saves money by reducing the overall cost associated with lost work days.[6] Thus, integrated DM approaches to managing behavioral health problems in the workplace rely on reasonable accommodation efforts to return employees with mental health related disabilities to work in order to demonstrate a return on investment for the cost of more expansive, and more expensive, mental health treatment options. The cost of such treatment is usually more than offset by the gains in workplace productivity by returning employees with psychiatric disabilities to work.

What are the primary DM functions that intersect with ADA compliance?

The primary areas of DM practice that intersect with or bear on ADA compliance include:

1. Benefits access: Many DM programs coordinate access for employees to disability/income replacement benefits. When an employee is injured or becomes ill, he/she is directed to the DM program to determine which of the often multiple disability benefit option offerings (sick leave, salary continuance, workers' compensation, short term or long term disability, retirement disability, etc.) may be appropriate. A single point of contact (such as "800" phone lines) often serves to assure that employees working in 24-hour operations or in widely dispersed locations around the country or around the world can quickly access benefits to which they are entitled once they become disabled. On-line enrollment and application processes have also evolved over the past several years to serve the needs of an increasingly computer-dependent and networked workforce. Such operations also serve as data collection points for absence and disability information used by companies to determine if DM efforts have the desired impact, i.e., reduce lost time and improve return-to-work outcomes.

   Compliance with ADA Titles I and III can be enhanced through centralized benefit and absence management efforts. Employees are assured immediate and seamless access to benefits through personal contact, phone lines, or on-line connections. Plan descriptions and information are also readily available if questions concerning coverage arise. Fast and efficient leave and benefits processing means that return to work and accommodation efforts begin as soon as medically feasible.

2. Identification of essential job functions: The ADA states that an individual with a disability must be qualified to perform the "essential job functions" of the position which he/she holds or seeks in order to seek reasonable accommodation. The essential job functions of a position are the foundation upon which DM staff evaluate the qualifications of employees with disabilities and determine what, if any, reasonable accommodation options exist. An essential job function is a set of tasks that comprises the most important activities of a job – they are not job skills, individual job tasks, or job descriptions. Thus, in making return-to-work recommendations, a DM staff person must determine what the essential job functions are that must be accomplished in order for modified work to be successful and productive.

3. Clarification of work limitations: DM programs serve a critical function linking physicians, employees with disabilities, and the company in developing return-to-work plans. Typically, companies employ nurse/case managers (either internally or externally contracted) to communicate with treating physicians regarding recuperation and return to work for employees with disabilities.

[6] Investing in Workplace Productivity: Managing Indirect Mental Health Costs. (1999). Washington, DC: Washington Business Group on Health.

Their job is to assure that employees receive appropriate, timely treatment and that any resulting work limitations are stated unambiguously, clearly, and in such a manner as to facilitate the modified work/return-to-work process. Even before issues of permanent accommodation arise, transitional job assignments must take into consideration the nature and extent of limitations experienced by employees recovering from injuries or illnesses. Should limitations persist, employer DM efforts to verify and understand restrictions as they change over time places the company in a stronger position to develop permanent reasonable accommodations under the ADA when and if that becomes necessary.

4. Development of modified job, return-to-work options: The heart of DM is facilitating an employee's return to work as soon as medically appropriate. Not only does the employer regain the services of a trained employee, but being back in the work environment often further speeds recovery for employees with disabilities. Non-discrimination under the ADA is also achieved by providing reasonable accommodation for disability-related limitations that restrict employees' ability to work. Most companies develop human resource policies and supervisory training materials to reinforce and support the return-to-work process with guidance from the DM program staff.

   Return-to-work/accommodation options include transitional work (temporary changes in job duties or techniques during periods of recuperation); modified work (changes in work tasks, schedules, methods, or equipment); or alternate work (reassignment to a different job if accommodations cannot be made in the original position). Typically, DM staff follow the reasonable accommodation process (even if restrictions are expected to be temporary) in order to make appropriate return-to-work decisions. First, DM staff analyze the job and determine the essential job functions. Then, they identify and clarify any disability-related restrictions, and generate a set of return-to-work options that appear to meet the work restriction needs of the employee with a disability. Finally, DM staff select the option that best balances the employee's needs and the company's expectations for productive work assignment and their business needs.

5. Interactive dialogue: Engaging employees with disabilities in meaningful discussion of their work options is a basic tenet of the ADA. Courts have found in favor of ADA plaintiffs/employees whose employers have attempted to impose accommodation options without having first had an interactive dialogue with them to assure their understanding and gain their agreement with accommodation plans. But beyond simply avoiding lawsuits, engaging employees in the return-to-work process makes good sense. Supervisors must feel comfortable that they understand the nature of an employee's work limitations. Both ultimately must have a stake in the success of any modified return-to-work plans and the earlier a dialogue between them can begin after an employee's disability becomes evident, the better. DM program staff provide the link between employees, physicians, and line supervisors to facilitate this discussion and resolve any issues that arise in the course of developing a return-to-work plan.

The following is a table representing how disability management functions contribute to ADA compliance

DM Program Functions	ADA Compliance Impact
Transitional/modified return to work	Aids reasonable accommodation essential job function analysis identification of job accommodation options identification of job aids, assistive devices
Benefits coordination, occupational and non-occupational disability	Ensures equal access to benefits (Title III)
Benefits application processing	Ensures equal and timely access to benefits
Case management	Aids reasonable accommodation clarification of work limitations identification of job accommodation options
Internal disability management process	Aids reasonable accommodation provides mechanism for evaluating/funding accommodations promotes interactive dialog
Independent medical exams	Aids reasonable accommodation clarification of work limitations
Education of supervisors, physicians regarding return-to-work process	Promotes interactive dialog
Safety and illness prevention	Aids reasonable accommodation identification of job aids, assistive devices (particularly ergonomic)

How can DM programs assure ADA compliance?

A Cornell University survey (conducted with the Washington Business Group on Health, the Society for Human Resources Management, and the Federal government)[7] provides a comprehensive assessment of both private and public sector organizational responses to the provisions of the ADA. Forty-five per cent of private sector employers (and 42% of government agencies) indicated that they have established formal DM/return-to-work programs and another 34% of private sector employers (and 24% of government agencies) stated that they had "informal" programs. An additional set of questions details the intersection between DM programs, among those organizations reporting that they had them, and ADA compliance by asking employers what contribution their DM programs had made to improving ADA compliance. The results:

- 89% of private sector companies (and 85% of federal sector agencies) said that DM programs

[7] S. Bruyère (2000). *Disability Employment Policies and Practices in Private and Federal Sector* Organizations. Ithaca, NY: Cornell University, School of Industrial and Labor Relations Extension Division, Program on Employment and Disability.

reinforced the importance of confidentiality. Given rising concerns about Internet privacy and medical confidentiality, it is an encouraging sign that DM programs help to create an atmosphere that protects employee privacy while at the same time working to accommodate employees with disabilities.

- 88% of private sector organizations (and 73% of federal government agencies) credit DM programs with raising acceptance of employees with disabilities in the workplace. The full inclusion of people with disabilities is a central theme of the ADA, and DM programs have advanced that aim in the workplace by supporting practices that normalize return to work and embed the reasonable accommodation process in organizational life.

- 87% of private sector companies (and 75% of federal sector agencies) found that DM programs raised supervisor awareness of the accommodation process. Employers report they have completed staff training on a wide variety of disability and return-to-work related topics most of which involve or are influenced by DM program staff.

- 79% of public sector employers (and 71% of public sector organizations) create an organizational structure for funding accommodations through their DM programs. Many companies have developed central accommodation funds that pay for worksite modifications above a predetermined ceiling (usually several hundred dollars). This reduces the impact of any expensive accommodations on small department budgets while providing a convenient means to track the provision of accommodation services company-wide.

In order to assure consistent application of reasonable accommodation principles, DM programs have developed organization-wide communications concerning the importance of return to work. Such policies create a "return-to-work culture" that encourages cooperation and flexibility in developing return-to-work options for employees with disabilities and reduces "entitlement mentality," a tendency for employees to feel that disability leave is an entitlement (like paid vacation leave). Before DM programs became widespread, employers were often unwitting "co-malingerers," enabling and even encouraging employees with even minor ailments to stay off work until they were "100% recovered." Now, such behavior is viewed as not only counterproductive (since it runs counter to the early return to work/productivity perspective) but is proscribed by the ADA.

What does the future hold?

Can businesses comply with the ADA and contain disability costs at the same time? In fact, cost containment and compliance go hand-in-hand. "Doing the right thing" also facilitates return to work, which, in turn, is correlated with reduced workplace disability costs. Although recent Supreme Court cases have begun to define the limits of ADA coverage, there are concerns that unreasonable expansion of ADA provisions may undermine the generally positive perception that businesses hold of the law. This need not be the case, however, because businesses have every incentive to continue to expand on DM program successes of the past decade.

As more companies realize the benefits of active return-to-work/DM programs, acceptance of people with disabilities in the workplace will increase. As employers experiment with more expansive employee health benefit programs designed to improve chronic illness management, former Social Security Disability Insurance recipients may find the workplace a more secure and inviting alternative under the Ticket to Work/Work Incentives Improvement Act. DM efforts to improve return-to-work outcomes will ultimately result in greater workplace flexibility and reduced benefit costs, generally, which, in turn, will pave the way for improved employment prospects for people with disabilities. And in the high-need, high

tech employment arena, assistive technology will continue to expand employment opportunities for even those with the most severe disabilities.

Thus, DM programs have not only saved benefit dollars and helped employees with disabilities become more productive, they have changed American business culture. DM programs have helped to lay the foundation within corporate America for the full inclusion of people with disabilities.

Resources

ADA Disability and Business Technical Assistance Center Hotline,
(800) 949-4232 (voice/TDD).

Cornell University Disability Management Website
http://www.odl.cornell.edu/projects/ilr/ped/1999-07-21-bruyere/

Certification of Disability Management Specialists Commission (CDMSC).
1835 Rohlwing Road, Suite E
Rolling Meadows, IL 60008
(847) 394-2106 ·
info@cdms.org
http://www.cdms.org/

Disability Management Employer Coalition (DMEC)
5694 Mission Center Rd., #310
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U.S. Equal Employment Opportunity Commission
1801 L Street, N.W., Washington, D.C. 20507; 1-800-669-4000 (voice), 1-800-669-6820 (TTY) to reach field offices; 1-800-669-EEOC (voice), 1-800-800-3302(TTY) for publications; web: www.eeoc.gov (publications available online)

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Other Brochures on the ADA Produced by the Program on Employment and Disability

Available on-line at www.ilr.cornell.edu/ped/ada

Human Resource Issues Surrounding Implementation of the ADA

The ADA and Collective Bargaining
The ADA and Personnel Training
The ADA and Total Quality Management
The Americans with Disabilities Act of 1990 and Injured Workers
Assistive Technology, Accommodations, and the Americans with Disabilities Act
Definition of Disability under the ADA: A Practical Overview and Update
Diversity and the ADA
Employee Medical Exams and Disability-Related Inquiries under the ADA
Health Benefit Plans and the ADA
A Human Resource Perspective on Implementing the ADA
Leave Rights under the FMLA and the ADA
Mediation and Title I of the ADA
Occupational Safety and Health and Disability Nondiscrimination
Performance Management and Employees with Disabilities
Pre-employment Screening Considerations and the ADA
Pre-employment Testing and the ADA
Reasonable Accommodation under the ADA
The Role of Disability Management Programs in ADA Compliance

Reasonable Accommodation in the Implementation of the ADA

Accommodating the Allergic Employee in the Workplace
Assistive Technology, Accommodations, and the Americans with Disabilities Act
Causes of Poor Indoor Air Quality and What You Can Do about It
Employing and Accommodating Individuals with Histories of Alcohol and Drug Abuse
Employing and Accommodating Individuals with Spinal Cord Injuries
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Working Effectively with Employees Who Have Epilepsy
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Working Effectively with Individuals Who Are HIV-Positive
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Working Effectively with People Who Are Deaf or Hard of Hearing
Working Effectively with People with Attention Deficit Hyperactivity Disorder
Working Effectively with People with Learning Disabilities
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