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Americans with Disabilities Act

- Section 504 enacted 1973 banned discrimination on the basis of disability by recipients of federal funds, was modelled after previous laws which banned race, ethnic origin and sex-based discrimination by federal fund recipients.
- Effective on January 1, 2009 and is regulated and enforced by the U.S. Department of Justice
- The Washington State Legislature is committed to making legislative activities and facilities accessible to all. The Legislature has taken steps to ensure that individuals with disabilities have full access to legislative activities, programs, and services.
- Applies to current employees who have had a work-related injury or illness

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Americans with Disabilities Act

- Case by Case basis
 - Criteria is different from ability to receive workers' comp or other disability benefits
- Employer may not ask about workers' compensation history
 - Unless there is a conditional job offer
 - Cannot require a medical examination unless required by all potential employees and after the job offer
- Essential functions of the job
 - Ensure accurate
- Reasonable accommodation
 - Modification or adjustment to a job or the work environment
 - » Essential functions of the position

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Americans with Disability Act

- Examples of reasonable accommodations
 - Making existing facilities-readily accessible to and usable
 - restructuring a job; modifying work schedules; acquiring or modifying equipment
 - Providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs
 - Reassigning a current employee to a vacant position
- There is no obligation to find a position for an applicant who is not qualified
 - Employer is not obligated to provide personal use items such as wheelchairs, glasses or hearing aids.

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Americans with Disabilities Act

- An employee (EE) that is "disabled" as a result of an industrial injury has the right to be reinstated to an:
 - Existing job, Modified job, or Alternative job
- Research if the EE can perform the "essential functions" of the position with or without a "reasonable accommodations"
- Employees may sue if the employer does not participate in the interactive process
- Consider all possibilities
 - Complies with obligations under ADA
 - Avoids considerable increases in WC premiums

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Best Practices

- Engage your safety personnel, manager and employee
 - Obtain detailed restrictions; this is typically done by the workers' compensation examiner
 - » If you are unable to decide based on broad restrictions, don't be afraid to ask for more details
- Review essential functions of the job(s) with the employee and manager
 - Ensure they are accurate and up to date
 - Ask the employee what reasonable accommodations looks like for them

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Best Practices

- Possible alternate position identified
 - Union contract
- Consider job shadow of the same title and unit/department
 - Review the Job Hazard Analysis (JHA) and ensure it is accurate.
 - Determine if there are tools or schedule fluctuations that will assist
- After conducting the investigation
 - Employee may return with certain accommodations
 - The position could not be modified to accommodate the restrictions

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Best Practices

- Hardship
 - Extremely difficult for large employers
 - Must have documentation
 - » Risk Assessment
 - Cost of Accommodation
 - Overall financial resources of employer, number of employees, and effect on expenses and resources
 - Impact of the accommodation on the operation of the employer's business, including impact on other employees' ability to perform duties
 - Does the necessary accommodation create a direct threat to the safety and health of the employee or others?

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Alternate Job Search

- Return to usual and customary is not possible
 - Alternate job search completed by the workers' compensation company
 - Stay engaged if the employee wants to remain with the organization
- Why?
 - Ensure restrictions can truly be accommodated
 - Saves the organization money on the WC file
- Moral

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Case

- Former fire Captain in the FDNY who suffered irreversible lung damage while participating in search, rescue, recover, and cleanup operations at the World Trade Center site in New York City after September 11, 2001. He is substantially limited in the major life activity of breathing.
- Light duty – Substance abuse counselor
- Permanently declared unable to conduct fire fighter duties
- What are the next steps?

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Examples

- EVS worker P&S with a restriction of no lifting over 25lbs
 - Available positions included "linen" (soiled linen collection)
 - No-lift system
 - » Some manual lifting
 - » Reasonable?

Reviewed these areas and determined alternative personnel could place this linen in the no-lift system containers which allowed the employee to take this open position.

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Example

RN in labor & delivery suffered her 2nd serious back injury and decided that if she were to return to her U&C that she may get injured again.

During the temporary modified work time, she stated that she might be interested in case management, so she was temporarily placed on modified duty.

The department received free labor, she gained knowledge of the position and received the experience.

The manager hired her when the next position opened. The RN was ultimately was P&S with 15lbs restriction and could continue in the position.

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