

VWC Vocational Rehabilitation Guidelines

The Virginia Workers' Compensation Commission has issued these guidelines for vocational rehabilitation with the hope that the guidelines will provide better understanding between the parties, facilitate appropriate vocational rehabilitation, and eliminate needless conflict and litigation.

Neither the Virginia Workers' Compensation Act nor the regulations of the Commission have any provisions regarding the licensure or certification of rehabilitation counselors. Therefore, the Commission does no regulation on this point. Reference should be made to the provisions of Title 54.1 referenced in Section 65.2-603 (A)(3) of the Workers' Compensation Act.

1. THE VOCATIONAL REHABILITATION PLAN

1. Vocational rehabilitation services, including vocational evaluation, counseling, job coaching, job development, job placement, on-the-job training, education, and retraining, shall take into account the employee's pre-injury job and wage classification; age, aptitude and level of education; the likelihood of success in the new vocation; and the relative costs and benefits of such services. Retraining should be considered if job placement efforts are not successful, or the employee's transferable skills are not readily marketable.
2. The provider should not ask the employee to engage in a job search or vocational rehabilitation until he/she is medically released for work. However, the provider may require the employee to meet in order to assess the employee's potential for work, and to prepare resumes and to schedule other appropriate actions, such as attending job preparation training, in anticipation of employment.
3. The two goals of vocational rehabilitation are to restore the employee to gainful employment, and to relieve the employer's burden of future compensation. Rehabilitation providers should attempt to find employment consistent with the employee's pre-injury position and salary level, and the provider should take into account such factors as distance, transportation costs, and actual anticipated earnings from the potential job, when considering such alternative employment.
4. It is the rehabilitation provider's responsibility to assess employment opportunities by direct contact with potential employers, and to determine whether a suitable position is presently available that is within the employee's restrictions and for which the employee is qualified. Until such prescreening contacts have been made to purge inappropriate leads, the provider should not ask the employee to attend interviews, but the provider may ask the employee to complete resumes and to attend job preparation training. The provider may ask the employee to attend interviews for present employment opportunities where it is anticipated that the employee will be released to such work within a reasonably brief period.
5. Telemarketing and commission sales positions are not appropriate job placement, unless the employee has demonstrated aptitude or ability in this line of work. Interviews with sheltered workshops and selective employers who are subsidized by employers/carriers are also inappropriate, if they do not provide the potential for legitimate rehabilitation, such as learning work skills or restoring the employee to a productive place in the labor market.
6. Requiring employees to look in newspapers, contact a specific number of potential employers per week, check listings at the VEC, or register with temporary services does not constitute appropriate "vocational rehabilitation." However, an employee may volunteer to do these activities. It would also be inappropriate for the rehabilitation provider to impose a blanket requirement on the employee to submit all job applications within twenty-four hours. It is not unreasonable for the provider to request written confirmation of the employee's job interviews or applications, where possible.
7. Rehabilitation providers may not advise the employee to withhold information about his/her injury or job capabilities during job interviews or on applications. However, the employee may not discuss them in such a way as to sabotage the interview or application process.
8. Employees are not required to give rehabilitation providers personal or financial information, such as number of children, spouse's employment, or credit history, unless such information relates to a *bona fide* occupational qualification for employment. An employee is required to disclose whether he/she is legally eligible for employment, has a valid driver's license, or has been convicted of a felony, and to provide his/her previous employment history.

2. MEETINGS BETWEEN EMPLOYEES AND PROVIDERS

1. Meetings should be held at reasonable times and places for both the employee and provider. Employees are not required to invite rehabilitation providers onto their property or into their homes. Also, just as the employee must cooperate with reasonable demands of the rehabilitation provider that are likely to return him/her to gainful employment, the provider must make reasonable accommodation for the employee's personal life.
2. Routine telephone contact should be made between 9:00 a.m. and 6:00 p.m. No calls should be made before 7:00 a.m. or after 10:00 p.m. except in cases of emergency.
3. The provider should give the employee advance notice, in writing, of meetings between the rehabilitation provider and employee, and of employment interviews. A minimum of five calendar days' notice of any meeting or employment interview is suggested, except for exceptional situations.
4. Prior to being released to light duty, the employee does not have to seek employment. However, the employee must meet with the provider to provide background information, to participate in an assessment of functional capacities in anticipation of a work release, and to satisfy other appropriate preparations for the vocational rehabilitation.

3. ROLE OF EMPLOYEE'S ATTORNEY

1. Employees have the right to have their attorney present at the initial rehabilitation meeting. However, an attorney may not delay such a meeting for more than two weeks nor can the attorney restrict contact between the employee and rehabilitation provider.
2. An employee may consult with his/her attorney at any time. Actions of the attorney will be imputed to the employee for the purposes of considering whether the employee is cooperating.

4. MEDICAL ASPECTS OF REHABILITATION

1. Neither the rehabilitation provider nor the carrier can medically manage the employee's treatment, by prescribing referrals, limiting treatment options, or otherwise participating in determining treatment unless requested by the physician.
2. Monitoring treatment is not medical management. With the consent of the physician, the provider may meet with the doctor outside of the employee's presence. The employee is not required to sign a consent granting the provider access to the physicians. If the physician does not wish to communicate with the provider, information may be obtained by utilizing discovery rights.
3. The employee has the right to a private examination by and consultation with the medical provider without the presence of the rehabilitation provider.
4. In order to determine the work capacity of the employee, the provider may require the employee to submit to a functional evaluation, if approved and authorized by the employee's treating physician or an independent medical examiner.

5. TRANSPORTATION AND OTHER COSTS

1. The employee is entitled to reimbursement for expenses incurred in rehabilitation efforts. This includes mileage costs for trips to the VEC, rehabilitation meetings, obtaining or returning applications, attending interviews, and other travel at the direction of the provider. Costs incurred for telephone calls, photocopying, postage, and obtaining DMV and other records are also reimbursable, if such are requested by the rehabilitation provider or a potential employer.
 2. When transportation is a problem, it is the responsibility of the vocational rehabilitation provider/carrier to make reasonable arrangements to insure the employee's attendance at meetings and interviews. This may include forwarding mileage money in advance or arranging appropriate alternative transportation, if requested.
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