



Job Ready Services

Job Ready Services, LLC



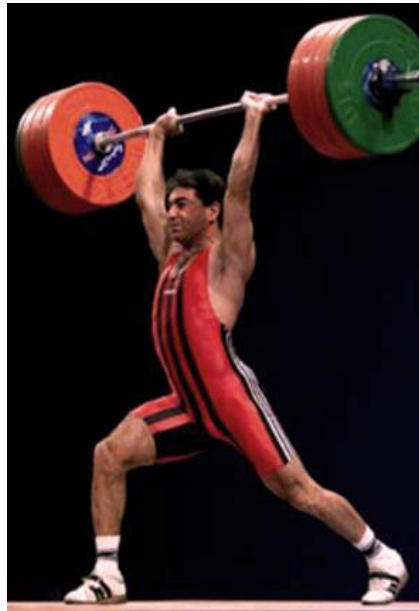
May 2009

Objective Information is POWER

Have you ever heard of “**negligent hiring**”? Some courts have held that employers are liable for negligent hiring if they know that the employee is “unfit, or has reason to believe the employee is unfit or **fails to use reasonable care to discover the employee’s unfitness before hiring him.**” Although background checks and drug testing are important, they only provide part of the picture of that employee – objective information about that person’s physical ability to do the job would show the employer’s due diligence in hiring an employee to ensure the employee’s safety to himself and others.

Furthermore, having a **job analysis that objectively measures the essential functions of the job, gives employers the advantage** when proving that the employee’s abilities match the physical demands of the job. This aids in an early, safer RTW from injury as well as a solid foundation for post offer employment testing. In one age discrimination lawsuit against an employer, a job analysis that was completed by an outside source was referenced by the court as being an “objective measure” of the job tasks. This was a significant factor in the ruling of the court in **favor of the employer.**

In cases of **work-related injuries**, oftentimes the decision to return the injured employee to work is based on **subjective information** – the EE’s complaints of pain, the employer’s requirements to be “100%”, the job description which lacks the true physical demands of the job and the conflict that ensues between the physician’s noted restrictions and the EE’s statement that they can’t do the job. Objective information is needed in each of these situations. Objective information about the EE’s



Lawsuits can happen, but having objective information in your corner can give you an invaluable advantage in showing your “due diligence” in most cases.

abilities, the physical demands of the job and whether these two things match will allow the EE to successfully RTW. In cases of post offer testing, objective baseline information of an EE’s abilities will document the EE’s pre-existing status and physical ability. Should that indicate an imminent risk of harm, the employer is able to negate the hire, thereby saving thousands of dollars in medical costs as well as saving that EE from an injury. Healthcare providers are often asked what was present before an injury – objective baseline information about that EE’s physical abilities, strength, ROM and flexibility will allow them to make that determination definitively instead of guessing or relying on the EE’s account.

“The job is causing my pain.” Employees who claim that the job is causing some musculoskeletal pain or problems, may need an ergonomic assessment. Objective observation and modification of the workplace may be needed as well as training with the EE on how to properly use equipment, improve posture and body mechanics as well as how to prevent common musculoskeletal injuries on the job will help to reduce and/or eliminate these claims.

EE had restrictions yesterday, but was released to RTW regular duty today. What changed in that EE’s physical status from yesterday to today? What was the basis of the release to regular work? If it was not based on objective information, then there is no guarantee that the EE is ready to RTW. A Fit for Duty or modified FCE provides objective information on that EE’s current abilities to RTW. The ADA gives the employer the right to require an exam after an injury or absence, as long as it is “job related and consistent with business necessity.” Further, a note from the physician does not supersede the employer’s right to require this exam.

Objective information is power – fact-based, observable evidence of a person’s abilities is far more substantial in determining the work ability of an EE than relying on subjective information. The more prepared one is with objective information, showing due diligence, the better off that person is with defending their actions.

[Abbreviations used: EE (employee); RTW (return to work); FCE (Functional Capacity Evaluation)]

News and Upcoming Events

More Objective Information
Remember: **Work conditioning** programs can provide objective information about a person’s abilities on a day to day basis, which will substantiate that person’s sustainability. An FCE is a good “snapshot” of that person’s abilities and a manner to document sincerity of effort, but work conditioning will outline work abilities on a daily basis.

If you have any suggestions for future topics or speakers for lunch and learns and/or seminars, please let us know!

JUNE LUNCH & LEARN:

Tuesday, June 30, 2009

12:00 pm—1:00 pm

Dr. Christopher Godbout

Radiofrequency Ablation

Approval Pending: CCM & CRC

Be sure to visit Job Ready’s booth at the NCIC Safety Conference in Greensboro, May 12-15.

Debra Lord will be a featured speaker at the WorkSTEPS symposium in San Antonio, TX on May 14.

Michelle Morgan will be speaking at the NCOHN section of the Safety Conference on May 14.

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For more information on any of these events or services, please contact Michelle Morgan:

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