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## Reducing Your ADA Burden By Implementing a Return to Work Strategy

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### Agenda

- Myths and Benefits of Return-to-Work and Stay-at-Work Programs
- Your ADA Obligations
- EEOC Guidelines and Settlements
- Key Elements for Successful RTW/SAW Programs
- Employer Program Review & Best Practices
- Q&A



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### Return-to-Work and Stay-at-Work Programs

<b>Return to Work (RTW)</b> A program that allows an employee, who is unable to perform the usual and customary duties of his/her job due to injury or illness, to return to work in a temporary, limited, or modified capacity	<b>Stay at Work (SAW)</b> A proactive approach to help an employee perform the usual and customary functions of his/her job through the use of vocational intervention and worksite modification
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**RETURN TO WORK** 

*For a complete and compliant approach, RTW programs should encompass both occupational and non-occupational injuries and illnesses and should engage employees in the interactive process*



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### Facts & Myths about RTW, SAW and Accommodations

 <b>6 MONTHS</b> 50% less likely to return to work	<b>MYTHS</b>	<ul style="list-style-type: none"><li>• It will create a workers' compensation claim</li><li>• We don't have to provide accommodations unless the injury happened at work</li><li>• Employees must be 100% or they cannot perform productive work</li><li>• Customer care or services will be negatively impacted</li><li>• Other employees will also want "light duty" or an accommodation</li></ul>
 <b>12 MONTHS</b> 90% less likely to return to work		



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### Benefits of RTW/SAW Programs

Shorten STD duration	Increase productivity	Increase employee value and self-esteem
Prevent STD incidents from happening	Improve employer compliance	Improve morale and engagement
Reduce employer costs	Promote faster recovery	Increase employee financial security



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### Fulfilling Your ADA Obligations

<b>Americans with Disability Act</b> <ul style="list-style-type: none"><li>• Prohibits discrimination in employment on the basis of disability</li><li>• Requires employers to provide reasonable accommodations to applicants and employees (absent undue hardship)</li></ul>	<b>Defining reasonable accommodation</b> <p>Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities</p> 
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### EEOC Guidance

**Leave as a reasonable accommodation**  
Enables the employee to return to work and do the essential functions of the job

**EEOC guidance issued**

- Application of existing leave policies
- Leave as a reasonable accommodation
- Maximum leave policies
- 100% healed policies
- Reassignment
- Undue hardship



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### EEOC Guidance



Employers may not require that an employee has no medical restrictions in order to return to work

Employers may not claim an employee's medical restrictions pose a safety risk if they cannot clearly demonstrate what the "direct threat" is (significant documentation required)



An interactive process is required when an employee presents job restrictions or limitations

- OK to ask why restrictions are required and how long they may be needed
- OK to explore accommodation options with employee and physician
- OK to evaluate undue hardship

Reassignment must be considered if there are no accommodations possible or if accommodations pose an undue hardship

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### EEOC Settlements

<p><b>American/Envoy Airlines</b></p> <p>November 2017</p> <p><b>\$9.8 million</b></p>	<p><b>Allegation</b> Employer did not allow employees with restrictions to return to work nor evaluate for possible accommodations</p> <p><b>2-year consent decree</b></p> <ul style="list-style-type: none"><li>• Injunctions against future discrimination or retaliation</li><li>• Revised policies</li><li>• Mandatory periodic ADA training</li></ul>
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**EEOC Settlements**

<p><b>Nevada Restaurant Services</b></p> <p>June 2018</p> <p><b>\$3.5 million</b></p>	<p><b>Allegation</b> Employer maintained a company-wide practice of requiring employees with disabilities to be 100% healed before returning to work (no interactive process or reasonable accommodations provided)</p> <p><b>3.5-year consent decree</b></p> <ul style="list-style-type: none"><li>• Consultant hired</li><li>• ADA training program</li><li>• Developed a centralized tracking system for regular reporting to EEOC</li></ul>
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**EEOC Settlements**

<p><b>Associated Fresh Market</b></p> <p>July 2018</p> <p><b>\$832,000</b></p>	<p><b>Allegation</b> Employer included a policy of requiring employees have no restrictions before returning to work.</p> <p><b>Employer agreed to</b></p> <ul style="list-style-type: none"><li>• Update their ADA policies</li><li>• Provide training for HR and management</li></ul>
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**EEOC Settlements**

<p><b>Coca-Cola</b></p> <p>August 2018</p> <p><b>\$2.5 million</b></p>	<p><b>Allegation</b> Nine charges of discrimination that the employer failed to properly accommodate employees with disabilities</p> <p><b>Employer agreed to</b></p> <ul style="list-style-type: none"><li>• Update policies to improve accommodations provided to employees returning to work after disability-related absences</li><li>• Create a dedicated accommodation team</li></ul>
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### EEOC Settlements

**Corizon Health**

May 2019  
**\$950,000**

**Allegation**  
Employer did not accommodate employees who required leave beyond medical leave policy; required employees with disabilities to be 100% healed or without restrictions before they could return to work

**Consent decree**

- Modify policies and practices
- Designate ADA coaches
- Provide annual training to all employees
- Hire a monitor to ensure compliance



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### Elements of a Successful RTW/SAW Program

Leadership Support	
RTW / SAW Culture	RTW/SAW Coordinators
ADA Interactive Process	Modified Duty Operations
Policies and Job Descriptions	Evaluation, Metrics and Training



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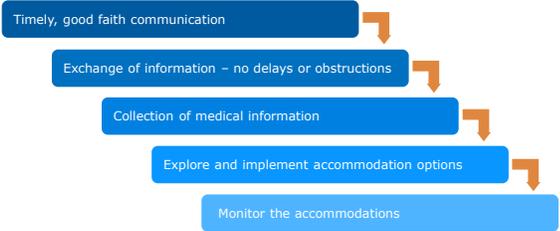
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### Interactive Process



- Timely, good faith communication
- Exchange of information - no delays or obstructions
- Collection of medical information
- Explore and implement accommodation options
- Monitor the accommodations



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### RTW and SAW Success Stories

**STROKE RECOVERY**  
Hard to focus in busy office after a stroke  
Private office not possible

Agreed to reposition her desk and purchase noise-cancelling headphones

- She was able to stay at work
- The employer was reimbursed by the disability carrier for the cost of the headphones



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### RTW and SAW Success Stories

**FOOT SURGERY**  
Doctors recommended 3 months off work  
(no 10-hour nursing shifts)

Vocational consultant and disability carrier partnered to develop her custom RTW plan

- Doctor approved RTW after 2 months based on the RTW plan of slowly increasing shift length over a 4-week time period
- Employer regained a valued employee sooner, reducing the disability cost and lost productivity



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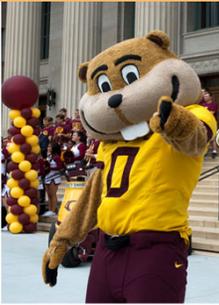
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### University of Minnesota

- 27,000+ employees systemwide
- 5<sup>th</sup> largest employer in Minnesota
- 5 campuses:
  - Twin Cities - St Paul, Minneapolis
  - University of Minnesota Duluth
  - University of Minnesota Rochester
  - University of Minnesota Crookston
  - University of Minnesota Morris
- University of Minnesota Extension: office in each of the 87 Minnesota counties



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### Research is Crucial at University of Minnesota

- Ranks 7<sup>th</sup> or 8<sup>th</sup> for major public university in terms of research dollars
- Generated \$793 million from research

Many staff positions rely on and generate research funding

- Creates RTW and ADA challenges
- Sometimes hard to maintain research protocols while providing accommodations

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### RTW Challenges

- Aging workforce
- Matching productive transitional work tasks with the available employee pool
- Siloed departments
- RTW/ADA
- Bargaining units
- Inconsistency across departments
- Cultural influences

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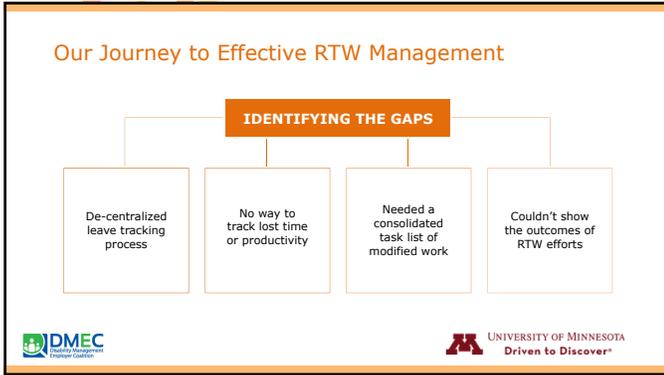
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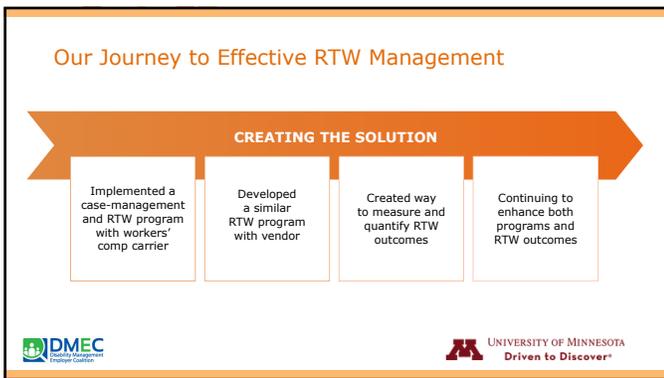
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### Disability Resource Center – UReturn

**UReturn provides:**

- Trained professionals to help employees return to work quickly and safely
- Coordination of an employee's successful return to work
- Support including job analysis, ergonomic consultation and accommodations if appropriate
- Confidentiality while working with medical providers to identify options to help return to work and maintain employment
- Ongoing contact with the University during employee's recovery and return to work

The slide contains a screenshot of the Disability Resource Center website on the left and a bulleted list of services provided by UReturn on the right. The DMEC logo is at the bottom left.

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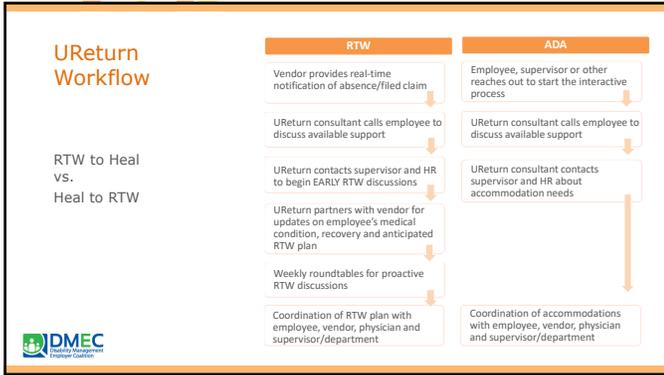
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## Improvements

- Real-time access to individual disability reports
- Easy access to claim information
- Intervention for every employee filing a STD claim
- Coordination through weekly roundtable discussions
- Method to track all attempted interventions and outcomes
- Mechanism that quantifies RTW efforts
- We have employed and developed partnerships with academic departments and student interns to conduct job analysis and ergonomic assessments, research unique job accommodations, and propose systematic and best-practice changes

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## First-Year Results

<b>229</b> short term disability claims*	<b>66</b> successful RTW outcomes	<b>1,238</b> saved lost workdays	<b>\$285,692</b> estimated savings
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\* 229 was the number of non-pregnancy claims with a duration of 30 days or greater. These are typically claims with the greatest potential for RTW.

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Coming Next



- Continue to enhance the non-occupational RTW process with Unum
- Engage supervisors in communicating with employees from the onset of the claim and throughout the RTW process
- Continue to educate supervisors and others on the importance of RTW
- Replicate workers' comp transitional work process for non-occupational injuries



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Return to Work and ADA Best Practices



- Don't view RTW and ADA in silos
- Understand your obligation
- Develop a policy and put it in writing
- Interact early and often
- Focus on the job not the illness or injury
- Be flexible
- Be welcoming
- Be creative



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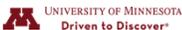
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Questions

Access presentation at [unum.com/learn](http://unum.com/learn)



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# Tuesday Concurrent Session B2

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