

Return to Work/Suitable Employment Laws & Indemnity Benefits

PRE MAXIMUM MEDICAL IMPROVEMENT (MMI) GUIDE

BEFORE House Bill 709

Claims Occurring On Or Before June 23, 2011

PRE Maximum Medical Improvement (MMI), “temporary assignment” work in compliance with assigned work restrictions **IS NOT** required to maintain eligibility for workers’ compensation benefits.

NET EFFECT:

Employees can refuse “temporary assignment” work and continue receiving workers’ compensation benefits **unless** the job actually exists with their employer and is approved by the authorized treating physician.

Workers’ Compensation Benefits Available:

Employer has pre-MMI “Suitable Employment” for Employee

1. Employee refuses to return to work: File Form 24 Motion to Suspend or Terminate benefits; or
2. Employee returns to work at less than pre-injury wage: Maximum 300 weeks TPD benefits payable; or
3. Employee returns to work at same or greater wage: No additional indemnity benefits due.

Employer DOES NOT have pre-MMI “Suitable Employment”

1. Employee does not RTW at all: Full TTD benefits payable.

AFTER House Bill 709

Claims Occurring On Or After June 24, 2011

PRE Maximum Medical Improvement (MMI), “temporary assignment” work in compliance with assigned work restrictions **IS** required to maintain eligibility for workers’ compensation benefits so long as the following conditions are met:

1. Work with employer of injury; and
2. Authorized treating physician approves job; and
3. Employer offers job.

NET EFFECT:

1. PRE MMI employees **can be required** to perform “MAKE WORK” i.e. rehabilitative or other noncompetitive employment.
2. “Temporary assignment” job **DOES NOT** have to exist or be part of usual operations.
3. Employer can implement comprehensive pre MMI Return to Work programs to immediately get injured employees back to work with no lost time.

Workers’ Compensation Benefits Available:

Employer has pre-MMI “Suitable Employment” for Employee

1. Employee refuses to return to work in “suitable employment”: File Form 24 Motion to Suspend or Terminate Benefits; or
 2. Employee returns to work in “suitable employment” at less than usual wage: TPD benefits payable for total of 500 weeks excluding weeks of TTD benefits already paid; or
 3. Employee returns to work in “suitable employment” at same or greater wage: No additional indemnity benefits due.
- Employer DOES NOT have pre-MMI “Suitable Employment”
TTD benefits payable calculated for maximum of 500 weeks from first date of disability.

House Bill 709, S.L. 2011-287 enacted new definition of “suitable employment”

Suitable employment. – The term “suitable employment” means employment offered to the employee or, if prohibited by the Immigration and Nationality Act, 8 U.S.C. § 1324a, employment available to the employee that

- (i) prior to reaching maximum medical improvement is within the employee's work restrictions, including rehabilitative or other noncompetitive employment with the employer of injury approved by the employee's authorized health care provider or
- (ii) after reaching maximum medical improvement is employment that the employee is capable of performing considering the employee's preexisting and injury-related physical and mental limitations, vocational skills, education, and experience and is located within a 50-mile radius of the employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate since the date of injury. No one factor shall be considered exclusively in determining suitable employment.

TTD (Temporary Total Disability): 2/3 of the employee’s pre-injury average weekly wage up to an annually set maximum weekly compensation rate.

TPD (Temporary Partial Disability): 2/3 of the difference between the employee’s pre-injury and post-injury average weekly wage



State Human Resources

Return to Work/Suitable Employment Laws & Indemnity Benefits

POST MAXIMUM MEDICAL IMPROVEMENT (MMI) GUIDE

BEFORE House Bill 709

Claims Occurring On Or Before June 23, 2011

POST Maximum Medical Improvement (MMI) job must meet the following conditions per settled case law i.e. Saums v. Raleigh Community Hospital, 346 N.C. 760 (1997)

1. Available in local labor market.
2. Reasonably attainable and offers opportunity to restore the worker as soon as possible and as nearly as practicable to pre-injury wage.
3. Give due consideration to the workers' qualifications (age, education, work experience, physical and mental capacities), impairment, vocational interests, and aptitudes.
4. No one factor shall be considered solely in determining suitable employment.

NET EFFECT:

Broad "suitable employment" requirements make it very difficult to locate a new job for an employee with permanent work restrictions.

Workers' Compensation Benefits Available:

Post-MMI "Suitable Employment" Not Available

1. Employee does not return to work: TTD benefits payable for employee's lifetime.

Post-MMI "Suitable Employment" Available

1. Employee refuses to return to work: File Form 24 Motion to Suspend or Terminate Benefits; or
2. Employee returns to work at less than pre-injury wage: Maximum 300 weeks TPD benefits payable; or
3. Employee returns to work at same or greater than pre-injury wage: No additional indemnity benefits due.

AFTER House Bill 709

Claims Occurring On Or After June 24, 2011

POST Maximum Medical Improvement (MMI) job must meet the following conditions per NCGS §97-2(22):

1. Employee is capable of performing work considering the employee's preexisting and injury-related physical and mental limitations, vocational skills, education, and experience.
2. Located within a 50-mile radius of the employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate since the date of injury.
3. No one factor shall be considered exclusively in determining suitable employment.

NET EFFECT:

1. Narrowed "suitable employment" statutory definition makes it easier to locate a new job for an employee with permanent work restrictions.
2. Wages, benefits, hours, age, and vocational interests **ARE NOT** relevant to a determination of whether a job is suitable.

Workers' Compensation Benefits Available:

Post-MMI "Suitable Employment" Offered to Employee

1. Employee refuses to return to work: File Form 24 Motion to Suspend or Terminate Benefits; or
2. Employee returns to work at less than pre-injury wage: TPD benefits payable for total of 500 weeks with credit for number of weeks of TTD benefits already paid; or
3. Employee returns to work at same or greater than pre-injury wage: No additional indemnity benefits due.

Post-MMI "Suitable Employment" Not Offered to Employee

TTD benefits payable calculated for maximum of 500 weeks from first date of disability.

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(ii) after reaching maximum medical improvement is employment that the employee is capable of performing considering the employee's preexisting and injury-related physical and mental limitations, vocational skills, education, and experience and is located within a 50-mile radius of the employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate since the date of injury. No one factor shall be considered exclusively in determining suitable employment.

TTD (Temporary Total Disability): 2/3 of the employee's pre-injury average weekly wage up to an annually adjusted maximum rate.

TPD (Temporary Partial Disability): 2/3 of the difference between the employee's pre-injury and post-injury average weekly wage.



State Human Resources