

Welcome to

# Risky Terminations

*Presented by*



Lawyers since 1897



## Meet Your Presenters



**Jenn Truong,**  
*Workers' Compensation  
Attorney*



**Vanessa Hughes,**  
*Director of Claims:  
Workers' Compensation*



**Britenae Pierce,**  
*Employment Law  
Attorney*



# Agenda

- Risks involved with terminations in consideration of legal statutes and case law
- Practical claim guidance in preparation for a termination
- Case studies
- Employment law considerations with a practical checklist to assist in your termination decision
- Questions

# Workers' Compensation

# Life of a Claim

- RCW 51.04.010: Allowance of work-related claims without assessment of fault. This can be an industrial injury or an occupational disease.
- WAC 296-20-01002: Proper and necessary treatment until maximum medical improvement.
- Claim Closure: Medical Fixity & Vocational Resolution
- Vocational Resolution
  - Return to job of injury without restrictions
  - Return to job of injury with permanent modifications
  - Return to another job with the employer
  - Employable based on transferable skills
  - Completion of vocational retraining complete

# Concerns from a Litigation Perspective

- What happens if we terminate the worker *prior* to claim closure?
  - Challenges with demonstrating medical fixity
    - Deconditioning
    - Secondary gain
    - Mental health component
  - Challenges with demonstrating vocational resolution
    - Light-duty and/or permanent offers
    - Timing of termination - *In re Chad Thomas*, BIIA Dec.,0010091(2001)
      - If worker terminated from a modified position for disciplinary reasons, it is not necessary to reinstate time-loss compensation if the disciplinary termination was administered for reasons unrelated to the industrial injury and the discipline would have been administered to other employees in similar circumstances.

# Financial Impact of an Open Claim

- Continued time loss exposure
- Pension
- Impact on experience modification rate
- Impact on retrospective rating refund
- Litigation – closure, valid light duty, PPD, pension



# Retaliation

- RCW 51.48.025 – An employer cannot terminate or discriminate a worker for filing a claim or exercising rights as part of their claim.
- Best Practices
  - Document the non-claim related reason for termination.
  - Ensure termination is consistent with disciplinary policy and correlates with prior actions taken against former workers.
  - Mindful of communication tone and attitude.
  - Consider whether actions can be characterized as discrimination: reduced schedule; not providing a light duty position offered to another worker.
  - Safety & Health.
- Consequences
  - Complaint to the Department director.
  - Investigation determining violation, action by director in Superior Court.
  - Investigation determines no violation. Worker can still directly institute action in Superior Court.



# Best Defense is in the Preparation

- Medical
  - Tedious although crucial to confirm treatment recommendations
  - Confirm and question activity prescription form releases
  - Request the medical opinions needed to move the claim forward
  - Direct impact on available light duty options
- Documentation
- Consideration for separation agreement
  - Not intended to take away or preclude future benefits



# **Valid Light-Duty Job Offers & Documentation**

# What is Light Duty?

- RCW 51.32.090:  
Provider Releases Injured Worker  
to Light Duty
- Interim Policy 6.50:  
Determining the Validity of a Light  
Duty Job offered by the Employer  
of Record



# Why Offer Light Duty?

- Protection from eligibility for time-loss, minimize claim costs and risk and protects against increase in EMR/rates and negative impact to retro refund
- Minimize Potential for Long Term Disability, Plan Development, Pension
- Keeps Injured Workers Engaged in Work Force
- Incentives for State Fund Employers (Stay at Work Program, Preferred Worker)

# Valid Light Duty Job Offer: Two Essential Components

## 1. Approved Job Description

- Get Provider Approval – Job Description Must be Sent to Certifying Health Care Provider and the Injured Worker
  - Best Practice is to send the job description to the Attending Physician
  - Obtain Approval from the Attending Physician

## 2. Written Job Offer Letter

- Light-Duty Job Description (refer to example)
  - Review APF restrictions
  - Draft the Light-Duty Job description based on APF (Activity Prescription Form)

# Activity Prescription Form

- Generated by the attending physician
- Check for accuracy
- Work status - date required
- Physical restrictions
- Follow-up visit

Download this form [here](#)



**State Fund Claim:**  
 Department of Labor and Industries  
 PO Box 44291 Olympia WA 98504-4291  
 Fax to claim file: 360-902-4587

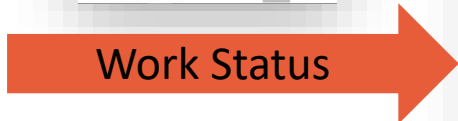
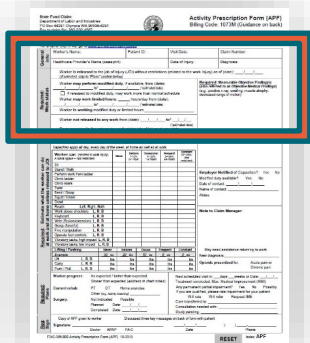
**Self-Insured Claims:** Contact the Self Insured Employer (SIE)/Third Party Administrator (TPA)  
 For a list of SIE/TPAs, go to [www.Lni.wa.gov/SelfInsured](http://www.Lni.wa.gov/SelfInsured)

**Activity Prescription Form (APF)**  
 Billing Code: 1073M (Guidance on back)

Reminder: Send chart notes and reports to L&I or SIE/TPA as required. Complete this form only when there are changes in medical status or capacities, or change in release for work status.

<b>General Info</b>	Worker's Name:	Patient ID:	Visit Date:	Claim Number:																																																																																																																		
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	How long do the worker's current capacities apply (estimate)? 1-10 days    11-20 days    21-30 days    30+ days    permanent Capacities apply all day, every day of the week, at home as well as at work:																																																																																																																					
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<b>Required: Plans</b>	Worker progress: As expected / better than expected Slower than expected (address in chart notes) Current rehab: PT    OT    Home exercise Other (e.g. Activity Coaching) _____ Surgery: Not Indicated    Possible Planned Date: ___/___/___ Completed Date: ___/___/___		Next scheduled visit in: ___ days ___ weeks or Date: ___/___/___ Treatment concluded, Max. Medical Improvement (MMI) Any permanent partial impairment? Yes No Possibly If you are qualified, please rate impairment for your patient Will rate    Will refer    Request IME Care transferred to: _____ Consultation needed with: _____ Study pending: _____																																																																																																																			
<b>Rec Sign</b>	Copy of APF given to worker _____ Discussed three key messages on back of form with patient _____ Signature: _____ Date: _____ ( ) _____ Doctor    ARNP    PA-C    _____    _____    _____    _____    _____    _____ Phone: _____																																																																																																																					

# Activity Prescription Form



- Released to job of injury
- Worker may perform modified duty
- Worker is not released to any work

**State Fund Claim:**  
 Department of Labor and Industries  
 PO Box 44291 Olympia WA 98504-4291  
 Fax to claim file: 360-902-4567



## Activity Prescription Form (APF) Billing Code: 1073M (Guidance on back)

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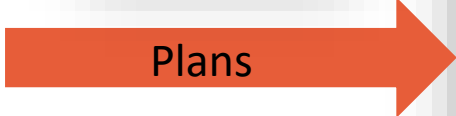
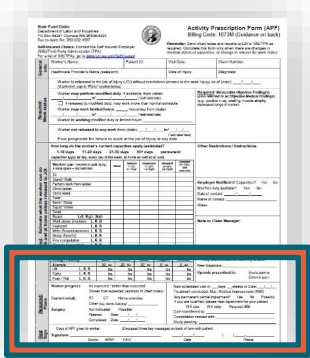
**Reminder:** Send chart notes and reports to L&I or SIE/TPA as required. Complete this form only when there are changes in medical status or capacities, or change in release for work status.

<b>General info</b>	Worker's Name:	Patient ID:	Visit Date:	Claim Number:
	Healthcare Provider's Name (please print):		Date of Injury:	Diagnosis:
<b>Required: Work status</b>	Worker is <b>released</b> to the job of injury (JOI) without restrictions (related to the work injury) as of (date): ____/____/____ (If selected, skip to "Plans" section below)			
	Worker may perform <b>modified duty</b> , if available, from (date): ____/____/____ to* ____/____/____ (*estimated date)			<b>Required: Measurable Objective Finding(s)</b> (also referred to as <b>Objective Medical Findings</b> ) (e.g., positive x-ray, swelling, muscle atrophy, decreased range of motion)
	<input type="checkbox"/> If released to modified duty, may work more than normal schedule			
	Worker may work <b>limited hours</b> : ____ hours/day from (date): ____/____/____ to* ____/____/____ (*estimated date)			
Worker is <b>working</b> modified duty or limited hours _____				
	Worker <b>not released to any work</b> from (date): ____/____/____ to* ____/____/____ (*estimated date)			
	<b>Poor prognosis for return to work</b> at the job of injury at any date			





# Activity Prescription Form



Plans

- Is the follow-up visit scheduled?

<b>Required: Plans</b>	<p><b>Worker progress:</b> As expected / better than expected Slower than expected (<i>address in chart notes</i>)</p> <p><b>Current rehab:</b> PT OT Home exercise Other (e.g., Activity Coaching) _____</p> <p><b>Surgery:</b> Not Indicated Possible Planned Date: ___/___/___ Completed Date: ___/___/___</p>	<p>Next scheduled visit in: ___ days ___ weeks or Date: ___/___/___ Treatment concluded, Max. Medical Improvement (MMI) Any permanent partial impairment? Yes No Possibly If you are qualified, please rate impairment for your patient Will rate Will refer Request IME</p> <p>Care transferred to: _____ Consultation needed with: _____ Study pending: _____</p>
	<p><b>Ref: Sign:</b> Copy of APF given to worker Discussed three key messages on back of form with patient</p> <p>Signature: _____ /___/___ ( ) _____ Doctor ARNP PA-C Date Phone</p>	

F242-385-000 Activity Prescription Form (APF) 10-2018

**RESET** Index: **APF**


# Employer's Job Description

- Use the Activity Prescription Form (APF) as a guideline
- Provide a mental picture of what the worker will be doing

Download this form [here](#)

Department of Labor and Industries

Physician billing codes for Review of Job Analysis and Job Description:  
 1038M – Limit one per day  
 1028M – Each additional review, up to 5 per worker per day.



## Employer's Job Description Form

Job of Injury  
 Permanent Modified  
 Light Duty/Transitional

Worker Name:	Claim Number:
Company Name:	Job Title:
Phone Number:	Fax Number:
Hours per day:	Days per Week:

Essential Job Duties:

Machinery, Tools, Equipment, and Personal Protective Equipment:

Frequency Guidelines:  
 N: Never (not at all)      S: Seldom (1 – 10% of the time)      O: Occasional (11 – 33% of the time)  
 F: Frequent (34 – 66% of the time)      C: Constant (67 – 100% of the time)

Physical Demands:	Frequency:	Description of Task:
Sitting		
Standing		
Walking		
Heights/Ladders/Stairs		
Twisting at the Waist		
Bending/Stooping		
Squatting/Kneeling		
Crawling		
Reaching Out		
Talking/Hearing/Seeing		
Working Above Shoulders	L <input type="checkbox"/> R <input type="checkbox"/> B <input type="checkbox"/>	
Handling/Grasping	<input type="checkbox"/>	
Fine Finger Manipulation	<input type="checkbox"/>	
Foot Controls	<input type="checkbox"/>	
Driving	<input type="checkbox"/>	
Repetitive Motion	<input type="checkbox"/>	
Vibratory Tasks	H <input type="checkbox"/> L <input type="checkbox"/>	
Lifting ( ) lbs.	<input type="checkbox"/>	
Carrying ( ) lbs.	<input type="checkbox"/>	
Pushing/Pulling ( ) lbs.	<input type="checkbox"/>	
Comments/Other:		

Employer Name (Please Print) \_\_\_\_\_ Title \_\_\_\_\_

Employer Signature \_\_\_\_\_ Date \_\_\_\_\_

**For Healthcare Providers' Use Only**

Approval  
 Yes  No  Approved with Modifications  
 Hours per Day: \_\_\_\_\_ Days per Week: \_\_\_\_\_ Effective Date: \_\_\_\_\_  
 If no, please list the objective medical finding: \_\_\_\_\_

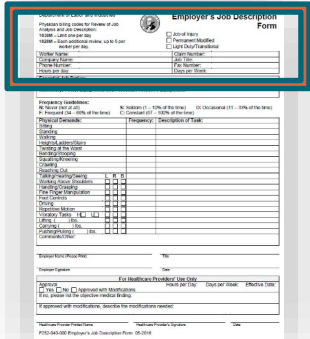
If approved with modifications, describe the modifications needed: \_\_\_\_\_

Healthcare Provider Printed Name \_\_\_\_\_ Healthcare Provider's Signature \_\_\_\_\_ Date \_\_\_\_\_

F252-040-000 Employer's Job Description Form 05-2016



# Employer's Job Description



Department of Labor and Industries



## Employer's Job Description Form

Physician billing codes for Review of Job Analysis and Job Description:

**1038M** – Limit one per day

**1028M** – Each additional review, up to 5 per worker per day.

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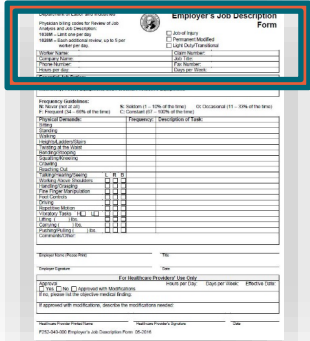
**Essential Job Duties:**

**Machinery, Tools, Equipment, and Personal Protective Equipment:**

## Hours/Days

Be clear on the number of hours and days you are requesting. Request the maximum that the job requires, not to exceed the worker's hiring schedule.

# Employer's Job Description



Department of Labor and Industries



## Employer's Job Description Form

Physician billing codes for Review of Job Analysis and Job Description:

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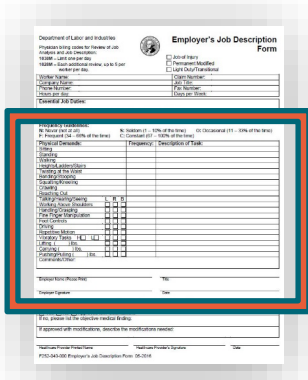
**Essential Job Duties:**

**Machinery, Tools, Equipment, and Personal Protective Equipment:**

## Essential Job Duties

Write a narrative description of the job to give the medical provider a mental picture of what the worker will be doing.

# Employer's Job Description



Physical Demands  
Use the Activity  
Prescription Form (APF)  
as a guideline and be sure  
to complete the  
Description of Task.

## Frequency Guidelines:

N: Never (not at all)

F: Frequent (34 – 66% of the time)

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Crawling		
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Talking/Hearing/Seeing	L R B	
Working Above Shoulders	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Handling/Grasping	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Fine Finger Manipulation	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
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Driving	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Repetitive Motion	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Vibratory Tasks	H <input type="checkbox"/> L <input type="checkbox"/>	
Lifting ( ) lbs.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Carrying ( ) lbs.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Pushing/Pulling ( ) lbs.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Comments/Other:		

Employer Name (Please Print)

Title

Employer Signature

Date

# A Valid Job is...



- A job with an employment pattern that at least matches the worker's employment pattern on the date of injury or date of manifestation of the occupational disease
- Consistent with the worker's physical and mental restrictions as provided by the worker's health care provider
- A job that pays at least minimum wage
- Within a reasonable commuting distance

# A Valid Return-to-Work Offer Must be in Writing

- **The employer's written job offer to the worker should include:**
  - A copy of the job duties - consistent with the worker's physical and mental restrictions as provided by the worker's health care provider
  - A statement that the employer reasonably expects the job to continue in the future
  - A reasonable start date (14 days' notice)
  - Work shift
  - Location of the work site
  - Who the worker will report to/supervisor
  - Wages



# Temporary Job Offer

Download this form [here](#)



(On company letterhead; deliver in-person or via certified mail with return receipt)  
Fill spaces, (delete)

(Date)

(Injured Employee Name)

(Address)

(City, State & Zip)

Re: Return-to-Work Job Offer  
L&I Claim No.: \_\_\_\_\_

Dear \_\_\_\_\_ (employee first name),

I am pleased to offer you transitional/light duty employment that will accommodate your current physical capacities. Your duties are described in the approved job description and are consistent with all physical limitations established by your attending provider. Your supervisor has also been advised accordingly. A copy has also been sent to your Claim Manager (CM) at The Department of Labor and Industries (L&I).

The details to report to work are as follows:

- You must report \_\_\_\_\_ (date and time) at \_\_\_\_\_ (location)
- Your supervisor is \_\_\_\_\_ and their phone number is \_\_\_\_\_
- Your work schedule is \_\_\_\_ (start time) to \_\_\_\_ (end time), from \_\_\_\_ (day) to \_\_\_\_ (day)
- Your wages will be \_\_\_\_ per \_\_\_\_ (hour/day/week) and applicable benefits are unchanged

Except when covered by state or local Paid Family & Medical Leave rules, you are expected to schedule any medical and therapy appointments around your work schedule, as you will not be compensated for time absent from work by L&I. You are also expected to comply with all company work rules and attendance policies.

Our goal is to provide all employees with a safe work environment. If you experience trouble performing these duties, please inform your supervisor immediately.

We require that you work within the physical capacities given by your attending provider. If anyone asks you to perform tasks beyond your physical capacities, you should decline and let your supervisor know immediately. Consistent with these expectations, you may be subject to disciplinary action if you choose to work beyond them.

Please review this offer and contact me at \_\_\_\_\_ (phone) to discuss arrangements. If you do not report to work, that will be considered as your decision to reject this offer of employment and your time loss benefits may be affected.

Sincerely,

Employer name & signature



# The Job Offer can be for the Employer of Record

- The work being offered by the employer:
  - Can be for any work performed at the employer's place of business, work sites and training facilities.
  - Does not need to be related to the worker's job duties at the time of injury; and
  - Should provide a meaningful and respectful work environment.
- Time-Loss continues until 1) the provider releases the injured worker to the job and 2) time-loss ceases, effective the start date of the light-duty job OR effective the start date even if the injured worker refuses the job
- Time-loss will not resume if the injured worker is unable to perform the job for reasons unrelated to the industrial injury or occupational disease

# Termination of Injured Workers: *In the Context of Light-Duty Job Offer*

Ensuring that For-Cause Terminations are Wholly Unrelated to the Industrial Injury or Occupational Disease and that the Injured Worker is Treated the Same as Any Other Employee:

- Would the light-duty job be available but for the actions of the injured worker which were unrelated to the industrial injury or occupational disease?
- Would discipline have been administered to other employees without open LNI claims?
- Did the employer follow their Employee Handbook Guidelines and Rules as they would for any employee (clear documentation/description of the violation of company policy, documentation of two verbal warnings followed by three formal write-ups communicated to the injured worker and signed off on by the injured worker)?

# Case Study #1

## 45-Year-Old Male, Laborer

**Description of Injury:** Knocked over on jobsite by an excavator (employer had strong reason to believe that the claimant deliberately placed himself in front of the excavator, claimant was going through a divorce at the time of the II, employer's jobsite camera was not working on this day, no proof to fight claim allowance)

To selected job to "Pain" section below)

**Required: Work status**

Worker may perform modified duty, if available, from (date): 3/10/20 to 4/10/20 (estimated date)  
 If released to modified duty, may work more than normal schedule  
 Worker may work limited hours: \_\_\_\_\_ hours/day from (date): \_\_\_\_\_ to \_\_\_\_\_ (estimated date)  
 Worker is working modified duty or limited hours \_\_\_\_\_

Worker not released to any work from (date): \_\_\_\_\_ to \_\_\_\_\_ (estimated date)  
 Poor prognosis for return to work at the job of injury at any date

**Required: Measurable Objective Findings (also referred to as Objective Medical Findings) (e.g., positive x-ray, swelling, muscle atrophy, decreased range of motion)**  
**Decreased ROM-shoulder**

How long do the worker's current capacities apply (estimate)?  
 1-10 days   11-20 days   21-30 days    30+ days permanent  
 Capacities apply at day, every day of the week, at home as well as at work.

**Required: Estimates what the worker can do (to ID)**

Worker can: (Related to work injury)	Never	Seldom 1-10% 0-1 hour	Occasional 11-20% 1-3 hours	Frequent 31-40% 3-6 hours	Constant 61-100% (Not restricted)
A blank space = Not restricted					
Sit					
Stand / Walk					
Perform work from ladder		<input checked="" type="checkbox"/>			
Climb ladder		<input checked="" type="checkbox"/>			
Climb stairs					
Tie/untie					
Bend / Stoop					
Squat / Kneel					
Crawl					
Reach	Left, Right, Both	<input checked="" type="checkbox"/>			
Work above shoulders	L, R, B	<input checked="" type="checkbox"/>			
Keyboard	L, R, B				
Wrist flexion/extension	L, R, B				
Grasp (forceful)	L, R, B				
Fine manipulation	L, R, B				
Operate foot controls	L, R, B				
Vibratory tasks: high impact	L, R, B				
Vibratory tasks: low impact	L, R, B				

**Employer Notified of Capacities?** Yes No  
 Modified duty available? Yes No  
 Date of contact: \_\_\_\_\_  
 Name of contact: \_\_\_\_\_  
 Note:

**Note to Claim Manager:**

May need assistance returning to work  
 New diagnosis: \_\_\_\_\_  
 Opioids prescribed for: Acute pain or Chronic pain

Lifting / Pushing	Never	Seldom	Occas.	Frequent	Constant	
Example	50 lbs	20 lbs	10 lbs	5 lbs	2 lbs	
Lift	L, R, B	lbs	15 lbs	lbs	lbs	lbs
Carry	L, R, B	lbs	15 lbs	lbs	lbs	lbs
Push / Pull	L, R, B	lbs	15 lbs	lbs	lbs	lbs

**Allowed Conditions:** Multiple rib fractures, lumbar sprain, sacral sprain, adjustment disorder, major depressive episode

**Terminated for cause with open claim,** restrictions in place at the time of termination, written valid light duty job offer in place (approved light-duty job description and light-duty job offer letter). The claimant was found to be ineligible for time-loss.

# Case Study #1

## Termination for cause was backed up by an abundance of supporting documentation:

1. Employee Handbook Policies that were in violation were specifically referenced and a copy of each specific policy was provided to the claim manager (unauthorized overtime, deliberate falsification of hours on timecards, engaging in verbal misconduct with supervisors and co-workers).
2. The claimant received two verbal warnings followed by 6 formal write-ups in the form of a Disciplinary Notice.
3. The verbal warnings and formal write-ups were all substantiated with specific dates/times of the violations, witness statements and supporting documentation.
4. Termination Letter 5.31.2021- termination effective immediately, letter stated the reason for the termination (continuous disruptive activities and disrespectful conduct).

# Case Study #2

## 63-Year-Old Male, Lineman Foreman

**Description of Injury:** Fell getting out of the back of a 1-ton truck, hit shoulders, neck, upper back.

**Allowed Conditions:** Cervical disc disease, cervical spondylosis, adjustment disorder, left shoulder sprain, shoulder tear.

**Terminated for cause without any communication to the CM or to the TPA.** Light-Duty Job Description was approved for only 4 hours per day; however, written light-duty job offer was for 8 hours per day and therefore invalid. The claimant was found eligible for time-loss.

Worker Name:	Claim Number:		
Company Name:	Job Title: Covid-Distance Monitor, Gen1		
Phone Number:	Fax Number:		
Hours per day: 8	Days per Week: 5		

**Essential Job Duties:**  
 Implement Covid-19 physical distance policy. Train and ensure people follow 6 ft minimum distance and gatherings are no more than 10 people during trainings, meetings and breaks. Do not allow sharing of pens, PPE, electronic devices, or water cooler. If needed, provide visual markers for workers to accurately judge distance. Regulate use of face masks and gloves. Regulate traffic to prevent unauthorized persons without PPE. Provide training on policy, update the training regularly. Report incidents to management. Keep visitor logs, preferably electronically. Coordinate with other Covid plan efforts and management. Work with team to manage language differences. Possess training in First Aid.

**Machinery, Tools, Equipment, and Personal Protective Equipment:**  
 Tape, tape measure, telephone, Ipad, laptop or tablet, Laptop/tablet, training and language aids. Trained in first aid

**Frequency Guidelines:**  
 N: Never (not at all)      S: Seldom (1 – 10% of the time)      O: Occasional (11 – 33% of the time)  
 F: Frequent (34 – 66% of the time)      C: Constant (67 – 100% of the time)

Physical Demands:	Frequency:	Description of Task:
Sitting	S	Sit for computer or log duties
Standing	O-F	Sit or stand to monitor
Walking	O-F	Tour facility
Heights/Ladders/Stairs	S	Stairs if multiple levels are monitored
Twisting at the Waist	N	Not required
Bending/Stooping	S	Enforce 6 ft distance policy
Squatting/Kneeling	S	Set visual cues or tape
Crawling	N	Not required
Reaching Out	N	Not required
Talking/Hearing/Seeing	L R B F	Monitor and train others
Working Above Shoulders	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	N
Handling/Grasping	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	O
Fine Finger Manipulation	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	O
Foot Controls	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	N
Driving	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	N
Repetitive Motion	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	N
Vibratory Tasks H <input type="checkbox"/> L <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	N
Lifting (1-10) lbs.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	O
Carrying (1-10) lbs.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	O
Pushing/Pulling (1-10) lbs.	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	S
Comments/Other:		

Position can be modified to fit restrictions. Please indicate if there are some activities that cannot be performed.

Employer Name (Please Print) \_\_\_\_\_ Safety Manager  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_

Employer Signature \_\_\_\_\_ Date \_\_\_\_\_

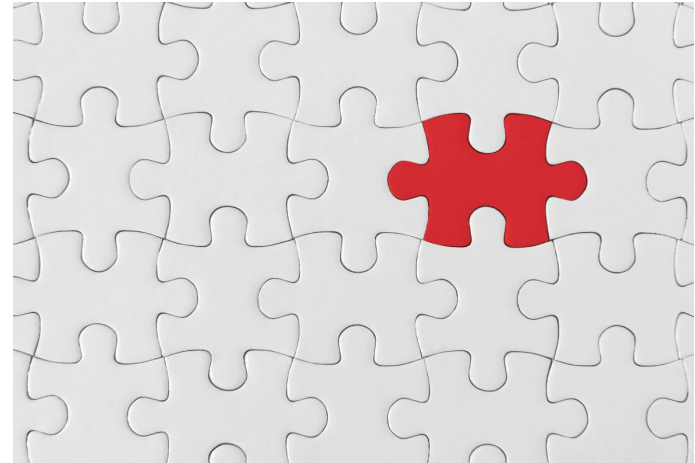
# Case Study #2

1. Employee Handbook Policy was vague about the violation that the injured worker was terminated for (gas card theft). The language in the handbook did not specifically address how/when the company gas card could be utilized. The claimant was allegedly putting non-work-related gas charges on the company credit card for his company vehicle.
2. The claimant never received any verbal or written write-ups in the form of a Disciplinary Notice even though the alleged theft went on for more than 2 years. The claimant was terminated over the phone and with a formal written separation agreement sent to him via certified mail.
3. The employer had a difficult time “proving” that the gas purchased was for personal purposes and the claimant claimed that he didn’t realize that what he was doing was wrong.
4. The lack of formal communication with the claimant leading up to the termination for cause and the lack of documentation regarding the violation was problematic.
5. The light-duty job offer was found to be invalid. The claimant was only released by his Attending Provider to work 4 hours per day, the written job offer was for 8 hours per day.

# **Risky Terminations: General Employment Perspective**

# Pre-Termination

- Process for termination should start well in advance of termination
- Think through all aspects of a termination before doing it





# Documentation

- Document and support the decision
- Goal to have documented evidence of non-discriminatory and non-retaliatory basis for termination
- If not enough support – consider establishing it prior to the termination
- Establishing support may take more time but will help to avoid or defend against a claim

# Recent Claim or Complaint

- Must be extra cautious when terminating an employee who has made a (recent) claim
- Focus on business reasons for decision unrelated to claim
- Particular focus on objective factors, not subjective
- Has the employee been given notice of the issue and an opportunity to correct it?

# Separation and Release Agreement

- Control risk related to terminated employee's future claim of discrimination, retaliation, or other employment-related claim
- Must give terminated employee something more than they are otherwise entitled to receive
- "Payment" can be \$\$, goods (keep the laptop), stock, etc.
- In exchange, get a release of employee's claims against the company

# Check Handbook and Employment Agreement

- Follow employment agreement, handbook, collective bargaining agreement
- Check for:
  - Notice
  - Severance
  - Pay unused vacation days
  - Stock vesting or re-purchasing
- Generally, treat people in similar circumstances the same way (ex. severance pay)

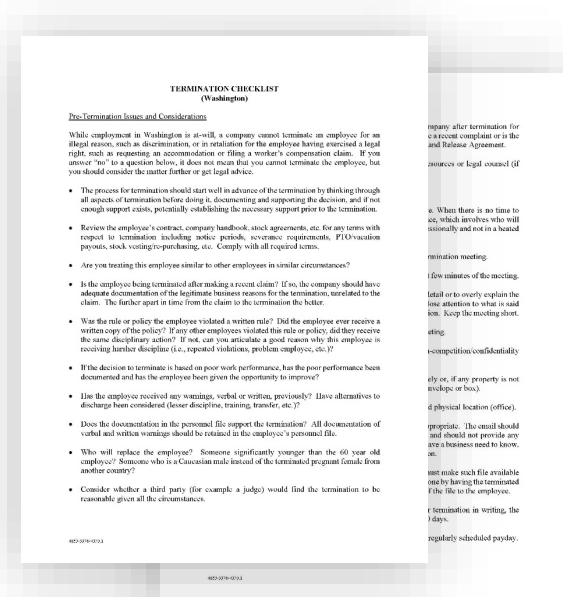
# Handling the Termination



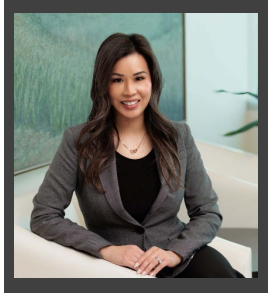
- Handle termination professionally
- Tell the truth
- Consider presence of a witness in the termination meeting
- Document termination/meeting

# Post-Termination Employee Obligations

- Non-competition agreement?
  - Review current WA law and salary thresholds before enforcing
- Non-solicitation agreement?
- Confidentiality issues?
- Return of company property?
- Consider reminding employee of these obligations
- Termination Checklist ([download here](#))



# Thank You



**Jenn Truong**

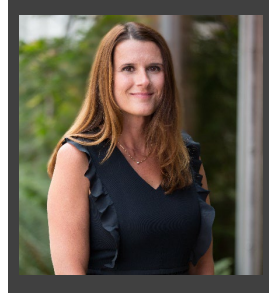
Ryan, Swanson & Cleveland, PLLC

1201 Third Avenue, Suite 3400

Seattle, WA 98101-3034

206.654.2289

[www.ryanswansonlaw.com](http://www.ryanswansonlaw.com)



**Vanessa Hughes**

Approach Management Services

1711 S Jackson St

Seattle, WA 98144

206.626.0846

[www.approachms.com](http://www.approachms.com)



**Britenae Pierce**

Ryan, Swanson & Cleveland, PLLC

1201 Third Avenue, Suite 3400

Seattle, WA 98101-3034

206.654.2289

[www.ryanswansonlaw.com](http://www.ryanswansonlaw.com)

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