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Police Agency Benefits Of
Return to Work Assignments

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By
Darrell West

Azle Police Department
Azle, Texas
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ABSTRACT

The field of law enforcement is an extremely dangerous profession. Officers are often hurt on the job due to fights, gunshots, vehicle accidents and numerous other ways. There is therefore, a need to ensure that officers are taken care of in the unfortunate event of these injuries. One way to do this is to ensure that agencies have a policy in effect dealing with the use of light or restricted duty assignments. The agencies themselves stand to benefit in a variety of ways from the implementation of these policies.

Prior to the initiation of any policy, research should be done to explore both the legal aspects and the responsibilities of an agency. The purpose of this paper is to explore the need for such a policy and establish that need through documentation. This research will show, through research and surveys, the benefits to the employer and the employee, of the use of a light duty policy.

It is concluded that there is a severe lack of these policies within the law enforcement community. These policies will increase the morale of the officers, and give them a feeling of security. Officers will be willing to give more to the agency because the agency is giving something to the officer that they are not legally bound to provide. The agency will benefit in lowering the cost paid to workers compensation, the high cost of replacing the injured officer and avoid possible lawsuits. The agency will act as both a manager and a leader because they will do the right thing for the right reason.

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Introduction

Law enforcement personnel have always been and always will be subjected to an ever increasing risk of physical injury sustained in the line of duty. There is an irreducible minimum amount of danger associated within the law enforcement profession. Those who choose a career in law enforcement, do so with the knowledge that the possibility of physical injury will always be present (Friend, 2000). Law enforcement officers face the possibility of being injured on the job in a variety of ways which involve high speed accidents, gunshots, assaults, and so on. It has been reported that overall, about 21 percent of injured workers surveyed, reported that they were either fired or laid off after a work related injury (Study Finds, 2001).

There is therefore a need to ensure that officers are taken care of by their employers, not only in medical insurance, but also by allowing the officer to return to work as soon as possible to a restricted duty assignment when needed. In addition to the advantage of a quicker recovery, the restricted duty assignment will allow the officer to get back into the socialization aspect of the agency and therefore avoid the feeling, on the part of the officer, of becoming an outsider. According to the most recent injury and illness statistics released by the Bureau of Labor Statistics, the share of lost workdays made up of restricted activity days has increased from less than 1 in 10 in 1976 to 1 in 2 in 1997 (Study Finds, 1998). This dramatic rise is attributed to the fact that many safety administrators have started an effective return to work program.

The purpose of this research is to answer the question: Are law enforcement agencies using or implementing adequate comprehensive "Light duty" or return to work policies that are beneficial to both the employer and the employee. The hypothesis is that the agency will benefit by improving morale, saving on medical expenses and avoiding the high cost of replacing employees. It is further hypothesized that the employees will benefit from increased

socialization, increased moral, and satisfaction in the knowledge that their employers really do care. While the Americans With Disabilities Act of 1990, (ADA) the Civil Rights Act of 1991, the Family Medical Leave Act, and the Workers Compensation reform all extend comprehensive medical assistance to injured employees, this paper will research the need to go one step further to increase the officer morale and avoid de-socialization. Second, law enforcement officers need to understand that the Americans With Disabilities Act does not require an employer to keep an employees job open indefinitely while the employee recovers from a workplace injury. (Barlow, 1996) Third, this paper will illustrate, through surveys and interviews, the advantages of increased employee morale, savings in medical expenses by both the employer and the general public whose taxes pay the workers compensation, and the savings in the expensive process of hiring a new replacement for the injured officer.

This paper will also explore and define important topics addressed by the Equal Employment Opportunity Commission, the Americans With Disabilities Act, and the Texas Workers Compensation Commission dealing with "qualified individuals", "reasonable accommodations", and "undue hardships". Finally, this paper will outline the components of an effective return to work policy stressing the need to all law enforcement officers and administrators to adopt a policy that will be beneficial to both the officers and their agencies.

This research paper is directed primarily towards law enforcement officers and administrators however, the general public should find that the concepts investigated will apply in most organizations in both the private as well as the public sector. The methods of research inquiries used in the development of this paper include the review of legal documents and literature, internet publications, library research and surveys.

Review of Literature

Since the beginning of time, there have always been workers of some type. It is therefore safe to assume that there have also been injuries related to the respected fields of work. Through the research of the statistics of injured workers, police officers were found to be in the group with the highest percentage of lost jobs due to injury. In a report published by the Research and Oversight Council on Worker's Compensation, police officers and fire fighters are listed as service workers. (Research 98). In this report, the council cites that this group has a rate of thirty-two percent firing and lay offs due to injuries. This rate is compared to twenty-six percent of accountants, schoolteachers and doctors, twenty-five percent of computer programmers, laboratory technicians, and medical assistants. The percentage for skilled labor such as carpenters, mechanics and truck drivers begins to drop dramatically. It appears, therefore, that police officers are in the highest danger group of loosing their jobs due to an injury.

Currently, the annual bill to industry for work related accidents is close to fifty billion and rising. The human costs, however, are even greater and include physical pain, suffering low self esteem and becoming dependent (Bittel, 1990). Numerous acts have since been passed such as the Civil Rights Act of 1866, the Railway Labor Act of 1926, the Wagner Act in 1935, the Taft Hartley Act of 1947, the Landrum Griffin Act of 1959, the Equal Pay Act of 1963, the Age Discrimination Act of 1967 and many more. None of these acts however, did much, if anything to address injured workers or the handicapped. In the mid to late 1900's however, workers began to get some relief. Discrimination in employment relationships began to address medical conditions with Title VII of The Civil Rights Act of 1964. There were many other acts established after that time such as

the Occupational Safety and Health Act of 1970, the Rehabilitation Act of 1973, the Pregnancy Discrimination Act of 1978, the Fair Labor Standards Act, the Family Medical Leave Act and more recently the Americans with Disabilities Act. Another very important part of the employment protection formula was the creation of the Workers Compensation Commission and the Equal Employment Opportunity Commission. To protect workers from financial loss due to work related disasters, the first worker's compensation law was passed in New York in 1910. Today all 50 states have such laws. (Digest, 1994). It is the Equal Employment Opportunity Commission (EEOC) who interprets and enforces the Equal Pay Act, the Age Discrimination in Employment Act, Title VII of the Americans with Disabilities Act, and sections of the Rehabilitation Act. The Commission was established by Title VII of the ADA. (Legal information Institute, 2001) A reasonable and prudent individual may therefore be tempted to assume that with all of the above listed protection, his or her employment position will be secure in the event of an on the job injury. This statement is especially true of those individuals working in law enforcement, believing that since they are required to perform hazardous duties, their employers are responsible. The fact is, there is a limit to the employers obligations. There is no federal law which requires employers to offer injured employees light-duty jobs (ARI, 1999). If an individual does not meet the essential job functions and is no longer qualified, then the employer is not required to retain the employee. (Crowe, 2001) There is, however, a possibility that temporary light duty assignments may meet the reasonable accommodation requirement under the Americans with Disabilities Act.

As stated earlier, the most assistance with this matter comes from The Americans with Disabilities Act. This Act outlines and sets the guidelines for employers to follow when dealing with injured or disabled individuals. Title one of the Americans with disabilities act prohibits discrimination on the basis of a disability in all employment practices. In order to receive assistance from and/or be protected by the ADA, the injured individual must meet the definition of an individual with a disability. An individual with a disability, under the ADA, is a person who has a physical or mental impairment that substantially limits one or more major life activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning, and working. (U.S.E.E.O.C., 1998) In the event that an individual meets this definition then the employer may be required to provide a reasonable accommodation to assist the employee. However, if providing the accommodation would create an undue hardship on the employer, the employer may be released from the reasonable accommodation requirement. In most cases however, the injured employee will not meet the requirements for assistance or protection from the Americans With Disabilities Act. Work related injuries do not always cause physical or mental impairments severe enough to "substantially limit" a major life activity (Study Finds, 1992). Most on the job injuries will heal in a relatively short period of time. In most of these cases the injured employee will be covered by Workers Compensation. In either case, it is the employer who bears the ultimate responsibility for deciding whether the individual is qualified, with or without a reasonable accommodation.

Another option to be aware of is the Family Medical Leave Act (FMLA). The FMLA allows an employee who works for a covered employer, and has worked for that

employer at least 12 months and 1250 hours, to take up to 12 weeks of unpaid medical leave if he or she is unable to work because of a serious health condition. At the conclusion of the FMLA mandated leave, an employer is required to return the employee to the same position or a substantially equivalent position, held by the employee prior to the leave (G. Bishop, personal communication, January 16, 2001).

Now, realizing that not all injuries will be covered by the American With Disabilities Act and/or Workers Compensation it begins to become evident that there is a need to have some type of additional assistance. One of the most recommended is to develop a light duty or return to work policy. The use of temporary light duty can provide employees with an opportunity to remain productive while convalescing as well as provide a work option for employees who may otherwise risk their health and safety, or the safety of others, by remaining on duty when physically or mentally unfit for their regular assignment (IACP, 1996). By establishing such a policy both the employee and the employer will reap the benefits. The basic purposes of compensation are to attract, retain, and motivate personnel, avoid costly turnovers and retain employees who possess needed job skills (Catt, 1991). Establishing a light duty policy is an added benefit that can assist the employer in decreasing the payout to workers compensation, hiring expenses and adding a needed satisfaction requirement to his employees.

Socialization is another important aspect of life within an organization. Socialization is defined as accepting and making the employee feel like a part of the team and not to be treated like an outsider (A. Denisi, personal communication, January 18, 2001). An injured employee who is not allowed to return to a light duty assignment, will

begin to feel like an outsider in a very short period of time. Other employees will see this action and begin to worry about their own security and morale may be lowered.

Supervisors should be concerned about the job satisfaction and morale of employees (Catt, 1991). Retaining competent individuals is important to any organization. If qualified individuals regularly leave a company, it becomes continually necessary to seek new personnel, which costs money and time (Donnelly, 1990). This is especially true of law enforcement, when considering the money and time spent on advertisements, written and physical tests, oral interviews, polygraphs, psychological test and training programs. It is plain to see that replacing one employee is going to cost several thousand dollars. Agencies that implement return to work policies will reap other benefits. When a company does more than it has to do for employees, the employees feel free to do more than they have to for the company (Levering, 1988). By providing a light duty option, the agency has now provided a benefit that it is not required to provide. A light duty policy should not be entered into, however, without thought and planning. Light duty is a popular means to get injured employees back into the "work mode" in preparation for full duty. However, a recent Department of Labor opinion letter advises employers covered by the Family and Medical Leave Act (FMLA) that light duty work cannot be required of an employee if he/she prefers to take leave under the Act (Bishop, personal communication, January 16, 2001). In order to initiate an effective light duty policy it is recommended to follow a check list similar to the list discussed in the "Findings" section of this paper.

Once the policy has been set, follow it. If you have a light duty policy and you don't follow it, then what you are doing becomes the policy (Bishop, personal

communication, January 16, 2001). Employers also, cannot and should not be expected to extend the light duty for an indefinite period of time. Interestingly, over one-quarter (26 percent) of laid off workers were let go from their jobs within one week of reporting their injury to their employer (Study Finds, 1998). Through years of work experience, it has been observed that most injuries, that do not cause permanent disability, will heal within six to eight weeks and the employee being able to return to a normal work load. Some obviously, may take a little longer. A light duty policy that extends the option for a period of six months with periodic reviews, should satisfy both the employer and the employee. While the intent of the light duty policy is to cover on the job injuries, managers and supervisors may also be wise to consider extending the same options for non work related injuries in the interest of employee morale and satisfaction.

Before placing an injured individual into a light duty position, the essential job functions should be determined. For example, taking a police officer off of patrol and placing him in a position in a jail booking room, with direct inmate contact, would not be conducive to light duty for that officer. The officers primary job functions, as well as the essential job duties of the light duty position should be reviewed. Managers and supervisors should also use caution in creating "permanent" light duty positions.

The following case review is cited as an example. This case involves light duty positions within a fire department in New York. Since two permanent light duty positions were available in the Fire Alarm and Fire Prevention Bureaus of a fire department in Mount Vernon, New York, the Court of Appeals held that such assignments were a reasonable accommodation for a partially recovered paraplegic. The plaintiff was injured in an off-duty accident, but wanted to return to work with leg braces

and part time use of a wheel chair. Since other injured individuals had been assigned to these jobs and had never been called to fight fires, the claimed undue hardship of having the worker available to fight fires was not valid. (Stone v. Mount Vernon, CA2, No 96 7976). This should demonstrate the importance of having a well designed policy to address the issue of light duty Assignments.

Methodology

So the question still remains. Are law enforcement agencies using or implementing adequate, comprehensive light duty, or return to work policies that are to the benefit of both the employer and the employee. It is hypothesized, that while many agencies are using some type of light duty assignments, they are not being used in a manner that will adequately protect both the employer and the employee. It is also hypothesized that many agencies will not have written policies and that they handle injuries on a case by case basis. This should be considered carefully with a new lawsuit around every corner. For instance, if one supervisor places an officer on light duty and another supervisor tells his subordinate that he or she, has to take sick leave, then your agency may be facing a lawsuit for unfair or bias treatment. Remember, if you do not have a policy, then what you are doing becomes policy. Will you remember in two years, what you did the last time?

To examine this issue a telephone survey was conducted to explore whether or not individual police departments use or have implemented a light duty policy that benefits the officer and the department. Twenty-five agencies within Texas were

contacted and interviewed regarding light duty assignments. While all agencies did take the time to answer questions on the subject, it was found that only five of the agencies questioned actually had a written policy. The information gathered in the survey was analyzed and the findings are contained in this report.

In this survey five basic questions were addressed. Does your Agency have a written Light Duty policy? Does the policy cover injuries incurred both on and off duty? Is there a time limitation placed on the length of the light duty? Does your agency keep permanent light duty positions available? Finally, Does your policy call for any type of periodic medical review of the employees status? Approximately forty agencies were called, however, contact was only established with twenty-five of these agencies. The remainder of the agencies either did not return the phone call ,or the person contacted did not know if the policy existed. The twenty-five agencies contacted are those listed in Table 1, with their responses recorded accordingly.

Findings

Earlier, it was mentioned that the cost of replacing an employee would be explored further. A personal interview was held with the Director of Public Safety, (J. Guillory, personal communication, April 23, 2001) of the Azle Police Department. The purpose of this interview was to discuss the cost involved in the replacement of an officer. During this interview, Director Guillory advised that of course the cost would depend on the individual department depending on their salary ranges. In addition to the base salary you would then add between 33 to 35 percent for benefits. Then you have uniforms, leather gear, and bullet proof vests for an estimated cost of

around one thousand to one thousand five hundred dollars. Prior to purchasing uniforms, there is the cost of advertising for the recruit, which for his agency runs around four hundred dollars for a three day advertisement. You can then add in the salaries of the personnel who administer the written test and physical ability test that the recruits must take. Then there is the salary of the personnel who must conduct the background investigations, along with additional cost related to those investigations in mail-outs, fuel costs, postage and long distance phone bills. Then, in addition to the above cost, and once an offer of employment has been extended, you have the additional cost of psychological examinations, medical examinations and in some cases polygraph examinations. Once again it is established that the replacement of an officer is extremely high and therefore every effort should be exhausted in an attempt to retain current officers or other employees.

The cost to replace an injured worker easily runs into the thousands of dollars. This can put a strain on agencies, especially the smaller agencies with limited resources. When considering the additional manpower involved in the recruitment and hiring process then you add even more strain. In addition to the cost and manpower issue, there is still the issue of losing what was probably a good officer. How many years of service are going out the window and what is going to become of that officer? While the agency may not be legally bound to him, there is still the human factor of caring about individuals. Agencies spend countless hours in the training and mentoring of officers and should not be ready to give them up so easily.

There are agencies that have some type of light duty assignments for their injured officers. However, it was earlier hypothesized that the findings would show that police

agencies do not have adequate, comprehensive policies to address the issue of light duty assignments. The vast majority of policy in this area is by practice and is not in written form. This is a dangerous practice for both the officers and the agencies.

TABLE I: Light Duty Position Survey Responses

AGENCY/ CONTACT	WRITTEN POLICY	ON DUTY COVERAGE	OFF DUTY COVERAGE	PERIODIC MEDICAL REVIEW
Benbrook PD Sgt. Waters	No	Case by case	Case by case	No
Balch Springs PD Lt. Lindsey	No	1 year	Chiefs Discretion	No
Bedford PD Lt. Roberts	Yes	No Limit	Maximum 6 months	No
Bridgeport PD Lt. Bailey	No	Case by case	Case by case	No
Cedar Hill Captain Rhoades	Yes	45 days	None	Doctors Advise
Mansfield PD Mac Bennett	No	Case by case	Case by case	No
Roanoke PD Lt. Fielder	No	Case by case	Case by case	No
Pelican Bay PD Chief Rogilio	No	None	None	No
Everman PD Det. McCollough	No	No Limit	2 weeks	Yes
Lakeworth PD Ofc. Wallace	No	Case by case	Case by case	No
N. Richland Hills Laura Null	Yes	Doctor's order	Doctor's order	2 weeks

Richland Hills Comm. Worledge	No	None	None	N/A
Riveroaks PD Chief Fiene	No	None	None	N/A
Flowermound PD Captain Lake	No	Case by case	Case by case	No
Haltom City PD Det. Miller	No	Case by case	Case by case	No
Hurst PD Lt. Moore	Yes	60 days	Chiefs Discretion	30 days
Joshua PD John Waldrip	Yes	Time Unk	Time Unk	No
Westover Hills PD Sgt. Cryer	No	Chiefs Discretion	Chiefs Discretion	No
Westworth Village Lt. Lipperdt	No	Case by case	Case by case	No
Willow Park PD Chief Arnold	No	Case by case	Chiefs Discretion	No
White Settlement Captain Gregory	No	None	None	N/A
Saginaw PD Captain Wortham	No	No Limit	None	No
Jacinto City PD Chief Ayala	No	No Limit	2 weeks	2 weeks
Watauga DPS Sandy	No	None	None	N/A
Weatherford PD Lt. Slimp	No	Case by case	1 week	No

It is clearly seen from the Table 1 data, that written light, restricted or modified duty policies are rare to say the least. Out of the twenty-five agencies listed, only five have anything in writing to address this issue. Only three of those policies required a specific periodic review of the injury. Most agencies in fact, treat the injuries on a case by case basis. Some agencies do not allow light duty work but do allow the employee to be off for up to one year until the workers compensation runs out. For off duty injuries, some agencies allow officers time off until their accrued sick and vacation time runs out. For the twenty-five different agencies surveyed, there are twenty-five different ways to approach the issue.

In writing a light duty policy there are several areas of concern that should be considered. As questioned above, will there be coverage for on duty injuries only or will off duty injuries be explored as well? Consideration should be given to the amount of time to be allowed in the light duty position. Essential job functions should be defined in the consideration of light duty. Consideration should also be given to the issue of periodic medical reviews to establish that the employee still requires the light duty assignment. The policy should contain a disclaimer that the return to work program shall not be construed as recognition that an employee who participates in the program has a disability as defined by the ADA (Safety Director, 1999). There are many other considerations as well and these will vary depending on the department. The important thing is to establish a policy and follow it.

Discussion/Conclusions

There is an obvious realization that a policy cannot be written to cover every situation that may be encountered. There are times however, that policies can be written that protect both the employees as well as the agency or organization for which it was written. The need for light

duty policies that will benefit both the employees and employers has been established. The purpose has been to bring this problem to the attention of officers and their administrators. The question addressed at the beginning of this paper was: Are law enforcement agencies using or implementing adequate, comprehensive light duty or return to work policies that are beneficial to both the employer and the employee? The hypothesis was that they were not and that both parties could have substantial benefits from the implementation of such policies. The research has shown that written light duty policies are rare and severely lacking in detail when they are found. It has been shown that most agencies follow a "case by case" approach, which does little to protect the employee or the employer. In today's society lawsuits are found around every corner. Written policies are needed to ensure that incidents are handled in a similar manner and avoid feelings of unfairness and or bias. It is important for officers to know their departmental policies. The most alarming and hardest thing to believe, was the number of contacts who did not know what their policies said or, in fact, if the policy even existed.

Research has shown that there are a number of options available through the Americans with Disabilities Act, Workers Compensation and others. It has also been established that there is no legal responsibility for the employer to provide light duty assignment. This is not covered by the Americans with Disabilities Act, Workers Compensation or any other acts. To provide a light or restricted duty assignment however, does show good management and leadership. In doing so, agencies can protect themselves from frivolous law suits, and they can get more from employees because workers will feel that they are being taken care of. This type of policy will also instill the feeling in your employees that agencies care about them and are concerned about their health, well being and career. A written light duty policy also lets the employee know what to expect well in advance of any injury. There is no need for the agency or the employee to wonder

what is going to happen when an injury occurs. There should and will be substantial savings from the recruitment and hiring process as well as the savings in workers compensation benefits. A light duty policy gets the employee back on his feet, busy and helps in the therapy of the officer.

This study is directed primarily to law enforcement personnel, being in the highest percentage group of firings and layoffs after a work related injury. Law enforcement officers face dangerous conditions on a daily basis, never knowing what is around the next corner. They need to know, and deserve to know what to expect in the event of an unfortunate accident or injury. Law enforcement officers invest a lot of time and training into their careers. Their hiring agencies invest a lot of time, money, training and other resources into their employees. There is therefore an obvious need for officers to ensure they are protected as well as an obvious need for the employer to ensure that the agency is also protected.

Hopefully, the benefits of a return to work policy have been shown. Throughout this research no reason has been found to indicate that the implementation of a light duty policy should be avoided. There have been several reasons however, documented above that show the benefits of a written "Light Duty" policy. These policies benefit both the employee and the employer. It is for these reasons that all agencies are urged to initiate such a policy. It has been said that a manager does things right and a leader does the right thing. It is time to be both a manager and a leader and do the right thing, and do it right.

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