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## The Dos and Don'ts of Light-Duty Offers

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Presented to:  
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## The Dos and Don'ts of Light-Duty Offers

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## Light Duty Offers – the Great Mystery

- Purpose of an offer is obviously to prevent/end TTD compensation
- Offers will be scrutinized by the Industrial Commission
- Plaintiff's counsel will point out and argue against every "defect"
- Offers must comply with virtually every part of the Ohio Revised/Administrative Code Sections
- Even then, offers seem to be rejected

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### Avoid the obvious traps...

- Having no proof that the injured worker received the offer
- Waiting too long to provide the offer
- Making offers that do not comply with restrictions
- Failing to update offers to comply with restrictions



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• **OAC 4121-3-32(A)(6):**

➤ "Job offer" means a proposal, made in good faith, of suitable employment within a reasonable proximity of the injured worker's residence. If the injured worker refuses an oral job offer and the employer intends to initiate proceedings to terminate temporary total disability compensation, the employer must give the injured worker a written job offer at least forty-eight hours prior to initiating proceedings. The written job offer shall identify the position offered and shall include a description of the duties required of the position and clearly specify the physical demands of the job. If the employer files a motion with the industrial commission to terminate payment of compensation, a copy of the written offer must accompany the employer's initial filing.

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**State ex rel. Ganu v. Industrial Commission**

10<sup>th</sup> Dist. No. 04AP-331, 2005 Ohio App. LEXIS 2180

- Job offer must sufficiently describe duties that are within these restrictions (be specific!)
- Unreasonable for [a] claimant to accept a job offer without her own physician's approval.
- "...where an employer makes a written job offer to a claimant which is based upon restrictions which the claimant's treating physician has indicated, then that is a "good-faith job offer" and, in the event that the claimant refuses the job offer, then claimant forfeits their right to receive TTD compensation."
- To be valid, the restrictions upon which a light duty offer is based should come from the treating doctor (not an IME).

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Tuesday, March 24, 2015

Dear Mr. [REDACTED]

This letter is being sent 3/24/2015 in response to receiving the MEDCO-14 (1/24/2015). Be advised that it is the responsibility of the employee to turn in a completed MEDCO-14 within 24 hours of each and all follow-up medical appointments per policy.

Due to your injury, including: Sprain of R wrist, we understand that you are temporarily unable to perform your previous work duties. However, we are willing to accommodate you until you are back to full capacity. Your treating physician, [REDACTED], has indicated that you are currently capable of performing modified duty work from 3/24/15 - 3/31/2015 with the following restrictions:

1. Occasionally lift/carry 0-10 lbs.
2. Never lift/carry over 10 lbs.
3. Frequently push/pull 15-25 lbs.
4. Occasionally push/pull 26-40lbs.
5. Never push/pull over 41 lbs.
6. Limited use of right arm/hand.
7. Wear wrist splint or ACR bandage at work.

We trust you will be able to perform your regular duties with the help of your coworkers, understanding that you will request help as needed per doctor's orders. If there are issues, call NHA at [REDACTED].

You should be able to perform duties such as: putting name tags on personal care items, passing laundry, passing trash, feeding and resident's meals. Do not go home for lack of work without contacting the Administrator [REDACTED].

You will be able to work your scheduled days that you have picked up (3/24/15, 3/25/15, and 3/26) during this transitional period. You will be paid at your regular rate, which is \$11.74/hour. Please note that this is a transitional period, which will be evaluated at various intervals as your condition improves. Our intent is offering this transitional period is to accommodate you until you are physically able to resume former job duties. The job description includes: assisting in feeding, passing meal trays, cleaning the dining room, answering telephones and other duties assigned by the LNHA or DON that are within your above stated restrictions. You have reported for this transitional period on 3/24/2015, per schedule. Failure to report to work may result in disciplinary action up to and including termination.

Please call me with any questions.

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**Excerpt from DHO order:**

In awarding the Injured Worker temporary total disability compensation, the Hearing Officer rejects the Employer's argument that the Injured Worker refused a valid written light duty job offer. It is the finding of the Hearing Officer that the written light duty job offers presented to the Injured Worker do not arise to a "valid light duty job offer". Specifically the job offers did not clearly identify the position offered nor clearly specify the physical demands of the job offered. All of the written light duty job offers presented to the Injured Worker noted that the duties may include certain work assignments such as: "assisting in feeding, passing meal trays, cleaning the dining rooms, answering telephones, and other duties assigned by the LMHA or DOW that are within your above stated restrictions." These job duties are ambiguous and do not clearly identify the physical demands of the job offered. Specifically the



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**Example from SI Claims Manual**

Sample job offer letter

Date

Dear Jane:

Your doctor has released you for light-duty employment. Since you have not yet reached maximum medical improvement and cannot return full time to your former position, we would like to include you in our transitional-duty program. Please consider this a formal offer of employment at the ABC Nursing Home. We will place you in a nursing position, but will only expect you to work from 7 to 11 a.m. five days per week. We will modify the duties of the job to be consistent with the restrictions imposed by Dr. Robert Spine.

Your job responsibilities will include: checking patient's blood pressure and temperature; making chart notations; dispensing medication and giving injections; and making appropriate chart notations. In addition, you will answer phones, send and receive faxes, and use the computer for scheduling, sending and receiving work-related emails. We will prohibit you from moving or lifting patients. You cannot lift or work above shoulder level.

The position is available as of July 1, 2013, and you will receive your normal rate of pay. Since this is less than the regular number of working hours, wage loss will supplement your wages through our workers' compensation program. Please sign the bottom of this sheet to acknowledge your acceptance of this position.

If you have any questions, you can reach me at 123-888-9999 or via email at vgreen@abc.com.

Sincerely,

<https://www.bwc.ohio.gov/downloads/blankpdf/SIClmsProcedureGuide.pdf>

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**The Dos:**

- Do make an offer!
- Examine the restrictions in detail/tailor the offer to the actual restrictions
- Ensure that the duties are actually within the restrictions
- Update the offer each time new restrictions are received
- Ensure that the claimant receives the offer
- Follow the requirements set forth in the Administrative Code
- Consider Modified Duty Offsite

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### Do make an offer!

- Important to provide the offer in a timely manner
- Will pay less TTD
- If the offer is rejected, will get to hearing faster
- Have more time to send to physician of record if desired
- Consider an offer even if claimant quits (within reason, of course)
- Consider calling the claimant's treating doctor to see if they will provide restrictions if none have been received.

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### Examine the restrictions in detail

- When drafting the offer, actually look at the restrictions provided by the POR
- Put the restrictions into the actual offer letter
- Determine what duties would actually comply with the restrictions
- Incorporate only duties that comply with restrictions into the offer
- Be specific on what the proposed duties will be!

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### Ensure that duties comply with restrictions

**Example of what not to do:**

- Restriction = No lifting over 5 lbs.
- Job Offer = Loading and unloading packages from delivery truck
- Ensure that the duties listed actually comply with the restrictions and be realistic... the duties will be picked apart by plaintiff's counsel and the IC.
- Perhaps include language that indicates that the "work may be performed without use of the left hand" if, for example, the restrictions prohibit use of that hand.
- Consider sending the job offer to the POR

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**Update the offer when necessary**

- Every time a new Medco-14 is received, examine the restrictions to ensure nothing has changed.
- If the restrictions have changed, the job offer must be updated.
- May need to do more than just add the new restrictions to the offer letter.
- Duties may have to be changed to comply.

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**Follow the requirements set forth in OAC 4121-3-32(A)(6)**

- Offer in writing (and make sure that it is received!)
- Made in good faith, of suitable employment within a reasonable proximity of the injured worker's residence
- Shall identify the position offered
- Shall include a description of the duties required
- Clearly specify the physical demands of the job

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**Offer should include:**

- » Job duties
- » Start date
- » Hours
- » Rate of pay

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Consider Modified Duty Offsite (MDOS)

- Just because you cannot accommodate the restrictions does not mean there is not a position for the injured worker somewhere...
- This service places claimants at facilities such as Goodwill, Mathew 25 Ministries and Habitat for Humanity Restore
- Same requirements for a valid light duty offer will apply

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**Formica Corporation**  
 8616 Ontario Highway  
 2000 Spring Road  
 Columbus OH 43240-4800  
 Telephone 614/786-1600

**Regarding Modified Duty Off-Site Placement**

Dear Ms. [REDACTED]

As you are aware, your physician of record has released you to return to work with restrictions. A copy of the restricted work release has been attached for your review.

At this time, no position is available within your physician outlined temporary restrictions at your current employer. Per Formica Corporation policy, it has been determined that you qualify to participate in the Modified Duty Off-Site Program. Through VocWorks, Formica Corporation has agreements with several non-profit organizations to provide temporary placement for you within your outlined restrictions.

An alternative position has been secured at a local non-profit facility that is within your physician outlined restrictions. This is a temporary placement and the purpose of this temporary placement is to facilitate a timely and safe return to work with the ultimate goal of returning to work on-site at Formica Corporation.

You are scheduled to report to Habitat for Humanity Restore, 896 Fairview Avenue, Hamilton OH on Monday, November 2<sup>nd</sup>, 2015 at 12 p.m. Your work schedule will be Monday through Friday between the hours of 9 a.m. to 5 p.m. An interview is required. You will be reporting to [REDACTED] and his phone number is [REDACTED]. Your VocWorks' case manager, [REDACTED], will meet you at the agency on the 2<sup>nd</sup>. [REDACTED] can be reached at [REDACTED].

While participating in the MDOS program, you will be required to follow all Company HR policy regarding attendance, general work rules, etc. An employee who fails to show up for a scheduled work day at the non-profit and has not followed the procedure for calling off will be considered to have quit without notice unless an acceptable reason has been given and is accepted by Formica Corporation.

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**VocWorks  
 MODIFIED DUTY OFF-SITE (MDOS)  
 Coordinator Update**

<b>To:</b>	Formica Corporation	<b>From:</b>	[REDACTED]
<b>Employer Contact:</b>	Debbie Lastman		VocWorks
<b>CM:</b>	[REDACTED]	<b>Phone:</b>	[REDACTED]
<b>Date:</b>	10/28/15	<b>Fax:</b>	[REDACTED]
		<b>Mobile:</b>	[REDACTED]

**REFERRAL INFORMATION**

<b>Injured Worker:</b>	[REDACTED]
<b>SSN or Claim #:</b>	[REDACTED]
<b>Date of Injury:</b>	7/30/15
<b>Allowed Condition:</b>	Right arm
<b>Type of Referral:</b>	Self Insured
<b>Restrictions:</b>	No use right arm, limited use left arm

**VOLUNTEER ASSIGNMENT INFORMATION**

<b>Agency Name and Address:</b>	Habitat for Humanity Restore, 896 Fairview Avenue, Hamilton, OH
<b>Agency Contact/Supervisor:</b>	[REDACTED]
<b>MDOS Date of Referral:</b>	10/27/15
<b>Placement Site Found:</b>	10/28/15
<b>Initial Meeting or Starting Date:</b>	11/2/15

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**Do Not Include Vague or Ambiguous Language**

- "Any other duty within your restrictions..." will never work. Ever.
- "Duties which will include sorting files, tagging documents and updating folders."
  - Still too vague. "Which will include..." leaves room for there to be other duties that are not included in the offer

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**Do not make the mistake of assuming that duties can be performed within restrictions**

- Example:
  - Restriction: No use of left arm.
  - Proposed Offer: Your duties will include restocking shelves and gathering carts.
- Actually check to see if the duties can be performed within the restrictions
- Think about what the injured worker's attorney will argue or what the IC will consider

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**Do not forget to review/account for new restrictions when they are received**

- Some PORs change restrictions at nearly every visit
- Job offers must change to match/comply with these restrictions
- Example: Limited use of wrist to later, no use of arm. Do duties need to change as well?
- Again, everything that can be argued against your offer will be argued.

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**What about a that claimant accepts a light duty job but then goes back off of work?**

- Often see situations where the claimant alleges that the employer violated their restrictions (store greeter case).
- The claimant then returns to the POR and gets removed from work completely.
- Consider IME which would opine that injured worker could have (and/or still can) perform the restricted duty.
- Have witness come to hearing to refute the claimant's allegations.

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**Job Abandonment?**

- Once a light duty offer is accepted, or once a claimant begins working in the light duty capacity, the job offer itself should no longer be scrutinized.
- For example, claimant has shoulder injury and later returns to work in light capacity. Claimant leaves the job because dust in the warehouse is aggravating his allergies.
  - This is not "job offer" issue but more of an abandonment issue.

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***State ex rel. Hildenbrand v. Wingate Transport***  
141 Ohio St.3d 533, 2015-Ohio-167

- Claimant reports to work with a modified duty restrictions – which are accommodated by the employer
- Later the same day, claimant gets into an argument with his employer when boss asks for claimant to stop using the car he loaned him
- Claimant becomes aggressive and the police are called by the boss – however claimant is never actually "fired"

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**State ex rel. Hildenbrand v. Wingate Transport continued...**

- Claimant later filed a claim and a request for TTD.
- IC allowed the claim but denied TTD, finding that the claimant voluntarily abandoned his employment
- Claimant appealed, arguing that you cannot “abandon” a position when you are already disabled (*Petty Products* case)
- Appellate and Supreme Courts reject claimant’s arguments and affirm the denial of TTD, finding that the claimant departure from work had nothing to do with the injury itself.

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**Things To Remember:**



**Dos**

- Be specific
- Follow restrictions exactly
- Update offers based on new Medcos
- Include all required information in actual offer (rate/hours, etc.)
- Consider MDOS



**Don'ts**

- Include any vague or ambiguous language
- Use “canned” language in the offer
- Forget to pay attention to changing restrictions
- Be afraid to offer work even if the claimant has quit

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