

An injured worker with an accepted Nevada workers' compensation claim must have permanent work restrictions from his authorized treating physician that prevents him from returning to the job he had at the time of his work accident before vocational rehabilitation services or benefits are even considered. If the injured employee is given a full duty work release, then the employee is not entitled to any retraining, even if the employee's job is no longer available when the employee is done treating and is released to return to work.

Often a treating physician will order a **functional capacity evaluation (FCE)** before deciding what the employee's permanent work restrictions should be at the final visit to the physician. The FCE is done by a physical therapist and consists of a series of physical tests such as lifting and carrying various weights and doing repetitive tasks. It is designed to determine work restrictions, if any. Insurers often give the physical therapist doing the FCE a description of the physical duties of the job the employee had at the time of the accident, so it can be determined whether the employee is capable of returning to his job. The FCE lasts several hours, and it has validity tests that supposedly show whether the injured worker is giving his best efforts. If the test comes back invalid, many physicians will release the injured worker to full duty without any restrictions at all. Some physicians will overlook that the FCE is invalid and will give whatever permanent work restrictions they think are appropriate. Most physicians agree with the work restrictions suggested by the FCE results, but the physician is free to impose greater or lesser work restrictions.

Assuming the physician gives permanent restrictions that prevent the employee from returning to his regular job, the insurer then asks the employer to respond within 30 days whether the employer will be offering the employee a permanent light duty job to accommodate the permanent work restrictions. Any permanent light duty job that is offered must be offered in writing, must be legitimate, and not be demeaning or degrading. The wages should be at least 80% of the employee's pre-accident gross wages, and employee benefits must be the same. If the injured worker decides to reject a legitimate permanent light duty job offer, he does not get vocational rehabilitation benefits. An injured may, however, appeal the termination of his benefits and argue to a hearings or appeals officer that the job offer was not legitimate, or that it did not satisfy the statutory requirements in some way.

The following additional list of circumstances may **disqualify** an injured worker from receiving vocational retraining, or a vocational rehabilitation lump sum buy-out instead of retraining:

- You have other existing marketable skills that make you immediately employable even though you have permanent work restrictions.
- You have already found alternative employment.
- You are in jail.
- You have already voluntarily elected to retire from the work force.
- You are an undocumented worker who was not legally hired when injured.
- You have already received a vocational rehabilitation lump-sum buy-out for this injury.

The rules regarding entitlement to vocational rehabilitation benefits and services are more complex when the injured worker moves after getting injured in Nevada. It is best to consult with an experienced Nevada workers' compensation attorney regarding your particular situation if you intend to move from Nevada, or have already moved out of state, or were a resident of another state when you were injured in Nevada.

Finding a suitable retraining program in Las Vegas is difficult for injured workers who do not read, write and speak English well enough to participate in programs offered by vocational schools. Only a few retraining programs are taught in Spanish. Those injured workers are often pressured into accepting a lump sum of money instead of retraining.

Please note that the above is not intended as legal advice as to a particular claim. Various additional facts could affect whether a particular injured worker is entitled to retraining on a particular claim.

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