

**ADVISORY NO. 282**  
**###**

**TOPIC: BONA FIDE OFFER TO RETURN TO WORK: RULE 129.6**

Rule 129.6 prescribes new requirements for bona fide offers. The rule is very specific and must be followed strictly.

To assist you in working with your insureds to facilitate legally enforceable bona fide offers of employment, we have drafted the attached form. We recommend that you use this or a form substantially similar to the attached. This should be distributed to each of your employers that offer modified duty.

Be sure to instruct your employers to confirm a return to work on modified duty by a letter documenting the tender of the modified work in accordance with the rule. You may elect to provide a complete copy of Rule 129.6 to your insured (copy attached).

[EMPLOYER LETTERHEAD]

[DATE]

[CLAIMANT ADDRESS]

Dear [CLAIMANT]:

[EMPLOYER] is in receipt of a report dated \_\_\_\_\_ from Dr. \_\_\_\_\_ relating to your current medical condition and your ability to work. A copy of that report is enclosed with this letter. [EMPLOYER] has used guidelines provided by the physician to identify an appropriate modified duty position for you. [EMPLOYER] hereby extends to you a bona fide offer of employment pursuant to TWCC Rule 129.6.

You will be expected to return to work on [DATE EMPLOYMENT IS TO BEGIN] at [ADDRESS AND LOCATION OF EMPLOYMENT, WHICH SHOULD BE GEOGRAPHICALLY ACCESSIBLE TO EMPLOYEE]. Your work schedule will be as follows: [DETAIL DAILY/WEEKLY HOURS OF WORK]. Your wages will be as follows: [DETAIL HOURLY/WEEKLY WAGES OR SALARY].

This position will entail these specific physical and time requirements: [SPECIFY IN DETAIL THE PHYSICAL REQUIREMENTS OF THE JOB, THE AMOUNT OF TIME TO BE SPENT DOING EACH, SCHEDULED BREAKS, ETC.]

Please be assured that [EMPLOYER] will only assign you tasks consistent with your physical abilities, knowledge, and skills and will provide you training if necessary.

If you accept this offer, please indicate by signing and dating your name below and returning this to the undersigned. If [EMPLOYER] does not receive this back from you within seven (7) days of receipt, [EMPLOYER] will assume you have rejected this offer.

\_\_\_\_\_  
NAME

\_\_\_\_\_  
DATE

Please contact the undersigned with any questions you might have.

Sincerely,

[EMPLOYER]

Enclosure: medical report of Dr. \_\_\_\_\_ dated \_\_\_\_\_

Rule 129.6. Bona Fide Offers of Employment.

- (a) An employer or insurance carrier (carrier) may request the treating doctor provide a Work Status Report by providing the treating doctor a set of functional job descriptions which list modified duty positions which the employer has available for the injured employee (employee) to work. The functional job descriptions must include descriptions of the physical and time requirements of the positions.
- (b) An employer may offer an employee a modified duty position which has restricted duties which are within the employee's work abilities as determined by the employee's treating doctor. In the absence of a Work Status Report by the treating doctor an offer of employment may be made based on another doctor's assessment of the employee's work status provided that the doctor made the assessment based on an actual physical examination of the employee performed by that doctor and provided that the treating doctor has not indicated disagreement with the restrictions identified by the other doctor.
- (c) An employer's offer of modified duty shall be made to the employee in writing and in the form and manner prescribed by the Commission. A copy of the Work Status Report on which the offer is being based shall be included with the offer as well as the following information:
  - (1) the location at which the employee will be working;
  - (2) the schedule the employee will be working;
  - (3) the wages that the employee will be paid;
  - (4) a description of the physical and time requirements that the position will entail; and
  - (5) a statement that the employer will only assign tasks consistent with the employee's physical abilities, knowledge, and skills and will provide training if necessary.
- (d) A carrier may deem an offer of modified duty to be a bona fide offer of employment if:
  - (1) it has written copies of the Work Status Report and the offer; and
  - (2) the offer:
    - (A) is for a job at a location which is geographically accessible as provided in subsection (e) of this section;
    - (B) is consistent with the doctor's certification of the employee's work abilities, as provided in subsection (f) of this section; and
    - (C) was communicated to the employee in writing, in the form and manner prescribed by the Commission and included all the information required by subsection (c) of this section.
- (e) In evaluating whether a work location is geographically accessible the carrier shall at minimum consider:
  - (1) the affect that the employee's physical limitations have on the employee's ability to travel;
  - (2) the distance that the employee will have to travel;
  - (3) the availability of transportation; and
  - (4) whether the offered work schedule is similar to the employee's work schedule prior to the injury.
- (f) The following is the order of preference that shall be used by carriers evaluating an offer of employment:
  - (1) the opinion of a doctor selected by the Commission to evaluate the employee's work status;
  - (2) the opinion of the treating doctor;
  - (3) opinion of a doctor who is providing regular treatment as a referral doctor based on the treating doctor's referral;
  - (4) opinion of a doctor who evaluated the employee as a consulting doctor based on the treating doctor's request; and
  - (5) the opinion of any other doctor based on an actual physical examination of the employee performed by that doctor.
- (g) A carrier may deem the wages offered by an employer through a bona fide offer of employment to be Post-Injury Earnings (PIE), as outlined in §129.2 of this title (relating to Entitlement to Temporary Income Benefits), on the earlier of the date the employee rejects the offer or the seventh day after the employee receives the offer of modified duty unless the employee's treating doctor notifies the carrier that the offer made by the employer is not consistent with the employee's work restrictions. For the purposes of this section, if the offer of modified duty was made by mail, an employee is deemed to have received the offer from the employer five days after it was mailed. The wages the carrier may deem to be PIE are those that would have been paid on or after the date the carrier is permitted to deem the offered wages as PIE.
- (h) Nothing in this section should be interpreted as limiting the right of an employee or a carrier to request a benefit review conference relating to an offer of employment. The Commission will find an offer to be bona fide if it is reasonable, geographically accessible, and meets the requirements of subsections (b) and (c) of this section.